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ABSTRACT

This publication summarizes federal laws governing record-keeping, reporting, and retention of records typically in the possession of private and public colleges. It reviews relevant requirements of statutory and regulatory laws in regard to student records (transcripts, medical records, admission files, and disciplinary records); employee records (personnel files, affirmative action information, and payroll records); reporting and record-keeping requirements for nonprofit institutions; student financial aid records; records for grants and sponsored research; law enforcement records (campus security and hazing reports); licensure and accreditation records; and miscellaneous records (including voting lists, registration of out-of-state motor vehicles, and records required by the Drug Free Schools and Communities Act of 1988). The publication also discusses privacy and nondisclosure issues in relation to particular types of records, along with specific time periods for record retention, as expressly provided by statute or regulation. An appendix provides an overview of Massachusetts state laws governing record-keeping, reporting, and retention issues for illustrative and comparative purposes. A grid giving citations for federal laws governing record-keeping and reporting requirements is appended. (Contains 76 footnotes.) (MDM)

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RECORD-KEEPING AND REPORTING REQUIREMENTS FOR INDEPENDENT AND PUBLIC COLLEGES AND UNIVERSITIES

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All URL's are accurate as August 1998, but are subject to change by the respective governmental agencies and institutions.

* * * * *

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FEDERAL LAWS GOVERNING RECORD-KEEPING AND REPORTING REQUIREMENTS¹

INTRODUCTION*

This publication is intended to ease the burden on in-house counsel and administrators at independent and public colleges and universities² by summarizing, in the main body of the publication, the federal laws governing record-keeping, reporting and retention of records typically in the possession of private and public institutions. For purposes of illustrating the laws of one state, Massachusetts law is included as Appendix A in parallel form to the main text. Although that state's laws are not applicable elsewhere, the particular wording and areas of coverage should provide a strong basis against which attorneys and administrators in other states can compare their own state's statutes and laws, both in terms of wording and content. Naturally, this publication cannot cover every detail of prescribed record-keeping and reporting; nevertheless, it does offer a comprehensive yet concise review of relevant requirements of statutory and regulatory laws in the following areas:

- student records, such as transcripts, medical records, admissions files, and disciplinary records;
- employee records, such as personnel files, affirmative action information, and payroll records;
- reporting and record-keeping requirements for nonprofit institutions, such as maintaining financial records and filing annual reports with the Attorney General;
- student financial aid records;
- grants and sponsored research;
- law enforcement records, such as campus security and hazing reports;

* * * * *

* Because statutes and regulations are constantly subject to change, the reader should always refer to the appropriate authorities for additional and/or updated requirements or consult an attorney who is experienced in the particular subject matter.

¹ Massachusetts statutes and general laws are included as *Appendix A*.

² The article will refer collectively to both a college and a university as an "institution."

- licensure and accreditation; and
- miscellaneous records, including voting lists, registration of out-of-state motor vehicles, and records required by the Drug Free Schools and Communities Act.

In addition, this resource discusses privacy and nondisclosure issues concerning particular types of records that are addressed either in the statute or regulation or in pertinent case law.³ It also includes specific time periods for retention of records that are expressly provided by statute or regulation.⁴ Where no specific time period is prescribed, the authors believe that a period of retention one year longer than the applicable statute of limitations is appropriately conservative for certain records relating to discrete subject matter, such as, for example, records concerning workers' compensation and affirmative action plans. For all types of records for which no other statute of limitations is applicable, a seven-year retention period, which encompasses the Massachusetts six-year statute of limitations for contract actions⁵ plus an additional year, is an adequately conservative time period for preservation of records.⁶ Exceptions to this general rule would apply for records relating to interests in real property, and to bequests in wills and testamentary trusts, for which there is no statute of limitations. In these cases, records should be retained indefinitely in the archives of the institution.

The subject matter and organization of this publication compel it to more closely follow the format of a deskbook rather than the more traditional softbound pamphlets, monographs, and compendia published by NACUA. By offering the information both in a three-ring notebook, accompanied by a diskette, and electronically on NACUA's home page, it allows users to continually add new information, or modify, update, and revise as necessary and/or appropriate, the information we have provided. The electronic format enables users to download the information directly onto one's own computer; the notebook format facilitates the process of photocopying and

³ Note that many of the state law "privacy" issues require a balancing of the individual right to privacy and the right of the institution, as an educational institution or employer, to disclose the information at issue in order to determine whether disclosure is warranted. In such situations, the institution may choose to seek a judicial declaratory ruling prior to disclosing the information, consult an attorney, etc.

⁴ Unless specified otherwise, the period of retention commences as of the date of making the record.

⁵ Mass. Gen. L. ch. 260, § 2A.

⁶ Certain contract actions have a twenty-year statute of limitations. Accordingly, any records relating to the following contracts should be retained for that time period: (1) contracts under seal; (2) notes or other indebtedness issued by a bank; and (3) promissory notes signed in the presence of attesting witnesses (if the action is brought by the original payee or its executor/administrator). Mass. Gen. L. ch. 260, § 1.

sharing specific record-keeping and reporting requirements with those administrators responsible for overseeing them. Of particular use and importance to all purchasers is the grid of *Federal Laws Governing Record-Keeping and Reporting Requirements*. Once downloaded, it provides links to the appropriate government agency responsible for issuing a specific statute or regulation. By clicking the URL, the computer takes you directly to that website for either more information or the full text of the statute or regulation.

The authors welcome any comments and suggestions from users as to how to keep this publication current and how best to offer updates and additions. Because of its focus, it will no doubt remain a "fluid" resource to which you will, hopefully and continuously, add new information as you need it. To this end, we encourage you to supplement the current array of federal statutes and regulations with those that are appropriate and applicable to your home state and the needs of your client institution.

Brandeis University
Waltham, MA
August 1998

I. RECORD-KEEPING AND REPORTING REQUIREMENTS APPLICABLE TO INDEPENDENT AND PUBLIC INSTITUTIONS

A. STUDENT RECORDS

1. *Summary of Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g*

The Family Educational Rights and Privacy Act ("FERPA") governs access to student records maintained by educational institutions and limits disclosure by institutions⁷ of those records. See 20 U.S.C. §§ 1232g(a)(1), (2); 1232g(b)(1), (2) (FERPA is also known informally as the "Buckley Amendment"). FERPA requires institutions annually to inform students of their rights under the statute, 34 C.F.R. § 99.7.⁸ In addition, FERPA prohibits institutions from destroying any record for which there is an outstanding request to inspect and review the record. 34 C.F.R. § 99.10(e). The penalty for non-compliance with FERPA is a withdrawal of federal funds from institutions which fail to comply with its provisions. 34 C.F.R. § 99.67.

2. *Student Access to Records*

FERPA requires institutions to provide students with access to their own records and an opportunity to challenge and correct inaccurate information. 20 U.S.C. § 1232g(d); 34 C.F.R. § 99.10.

a. Records Covered

Under FERPA, students must be given access to their education records, which are defined as any records maintained by the institution and containing information directly related to a student or former student.⁹ 20 U.S.C. § 1232(a)(4)(A); 34 C.F.R. §§ 99.3, 99.10. However, FERPA does not encompass records regarding rejected applicants or others not in attendance at the institution. 20 U.S.C. § 1232g(a)(6); 34 C.F.R. §§ 99.3, 99.31(a)(12).

⁷ FERPA only applies to institutions that receive federal funds, including institutions with students receiving federal financial aid. 34 C.F.R. § 99.1(d). Thus, in the unlikely event that an institution does not receive federal funds, either directly or indirectly through financial aid to students, it would not have to comply with FERPA.

⁸ If a student is under eighteen, his or her parents or guardian are entitled to the rights conferred by FERPA on behalf of the student. 20 U.S.C. § 1232g(a)(2); 34 C.F.R. § 99.3-99.5; 99.10.

⁹ Records concerning students no longer enrolled at the institution, such as alumni newsletters, are not covered by FERPA. 34 C.F.R. § 99.3.

b. Records Not Covered

- (1) financial records of a parent, 34 C.F.R. § 99.12(b)(1);
- (2) confidential letters of recommendation placed in student's file before June 1, 1975, 34 C.F.R. § 99.12(b)(2);
- (3) confidential letters of recommendation, *if* the student has waived his/her right of access, 34 C.F.R. § 99.12(b)(3);¹⁰
- (4) records of a faculty member or related supervisory or administrative personnel which are in the sole possession of the maker and which are not disclosed to others, 20 U.S.C. § 1232g(a)(4)(B)(i);
- (5) records maintained and created by a law enforcement unit of the institution for law enforcement purposes, 20 U.S.C. § 1232g(a)(4)(B)(ii);
- (6) employment records of employees who are not attending the institution, 20 U.S.C. § 1232g(a)(4)(B)(iii);¹¹ and
- (7) records made by a medical or psychological professional in connection with treatment of a student and which are not available to anyone else; however, such records may be reviewed by an appropriate professional of the student's choice, 20 U.S.C. § 1232g(a)(4)(B)(iv).

3. Privacy and Non-Disclosure of Records

FERPA prohibits institutions from releasing educational records to any third party without the written consent of the student or parents, subject to the following exceptions. *See* 34 C.F.R. §§ 99.5, 99.30 (requiring student consent); *id.* at § 99.30 (requiring parental consent).

¹⁰ Such a waiver must meet specific requirements described in 20 U.S.C. § 1232g(a)(1)(C)(iii) - (c) and 34 C.F.R. § 99.12(b)(3).

¹¹ This does not include students working for the institution as a result of their status as students; such records are considered educational records and are covered by FERPA. 34 C.F.R. § 99.3.

a. Exceptions for Certain Parties

An institution may, but is not required to, release a record to, among others, the following parties:

- (1) other officials in the same institution who have a legitimate educational interest in the record;
- (2) officials of an institution at which the student plans to enroll;
- (3) state and federal education authorities for purposes of auditing, evaluating, or enforcing state or federal programs;
- (4) other organizations, in connection with student applications for or receipt of financial aid;
- (5) accrediting institutions;
- (6) parents of a student who is still considered a dependent and is listed as such on his/her parents' federal tax returns, or of a student under eighteen, 34 C.F.R. §§ 99.31(a)(8), 99.31(a)(12);
- (7) other parties, in an emergency and if necessary to protect the health or safety of a student or other persons, 34 C.F.R. § 99.31(a)(10);
- (8) other parties, in compliance with a judicial order or subpoena; however, the institution must make a reasonable effort to notify the student in advance of production, 34 C.F.R. § 99.31(a)(9); and
- (9) an alleged victim of a violent crime, the results of a disciplinary proceeding regarding the perpetrator, 34 C.F.R. § 99.31(a)(3).

See 20 U.S.C. § 1232g(b)(1); 34 C.F.R. § 99.31.

b. Exceptions for Certain Types of Information

"Directory information," which includes information such as a student's name, address, phone number, date and place of birth, major, participation in sports, and degrees or awards received, may be released to the public, so long as:

- (1) students are given notice that the institution has a policy of releasing this information; and
- (2) students are given an opportunity to inform the institution that they do not want any information released.

See 20 U.S.C. §§ 1232g(a)(5)(A) - 1232g(a)(5)(B); 34 C.F.R. § 99.37(a).

Directory information regarding former students may be disclosed without following these notice provisions. 34 C.F.R. § 99.37(b).

c. Conditions for Disclosure of Information to Third Parties

Institutions must keep a list of all persons who have requested or are given access to a student's records, except officials from the same school, and the list must "indicate specifically the legitimate interest that each such person has in obtaining the information." 20 U.S.C. § 1232g(b)(4)(A). See 34 C.F.R. § 99.32. The institution must maintain the list with the education record of the student to whom it pertains and make such record available to the student upon request. Disclosure of personal information from an education record may be made to a third party only on the condition that the third party will not give anyone else access to the records or information without the student's written consent. 20 U.S.C. § 1232g(b)(4)(B); 34 C.F.R. § 99.33(a),(e).

FERPA contains no retention requirements for records required to be kept of requests for access to and disclosure of information from education records of a student. These records should, however, be retained at least as long as the underlying records.

4. *Admissions*

a. Record-Keeping/Retention

There are no specific record-keeping or retention requirements under federal law for admissions records.

b. Privacy/Nondisclosure

FERPA applies to admitted students, but not to rejected applicants. 20 U.S.C. § 1232g(a)(6). Accordingly, institutions must make admissions records available to students, but not to rejected applicants.¹² In addition, admissions records may not be released to third parties without the

¹² Note that any confidential letters of recommendation in an admissions file may be withheld from a student who has waived his or her right of access to them. 34 C.F.R. § 99.12(b)(3); see *supra* section I.A.2.b.3.

student's written consent, except for certain exceptions provided in FERPA. *See supra*, Section I.A.3.a.¹³

5. Departmental Files

a. Record-Keeping/Retention

There are no specific record-keeping or retention requirements under federal law for departmental files.

b. Privacy/Nondisclosure

FERPA applies to departmental files insofar as such records contain personally identifiable information regarding an individual student. However, some information, such as a student's major or awards received, may be considered "directory information," which the institution may disclose to the public under certain conditions. *See supra* Section I.A.3.b. Federal law does not govern the treatment of departmental files which do not contain personally identifiable information regarding a student.

6. Student Disciplinary Records

a. Record-Keeping/Retention

Federal law does not prescribe record-keeping or retention requirements for student disciplinary records.

b. Privacy/Nondisclosure

In general, student disciplinary records are subject to FERPA, which means that a student must be given access to his or her files and also that such files may not be made available to third parties. 20 U.S.C. § 1232g(h). However, FERPA does restrict a student's access to records maintained by law enforcement authorities for law enforcement purposes. *Id.* at § 1232g(a)(4)(B)(ii), 34 C.F.R. § 99.8. Further, FERPA allows the victim of a crime of violence to obtain records of disciplinary proceedings against the alleged perpetrator. *Id.* at § 99.31(a)(3); *see supra* section I.A.3.a.9.

7. Student Employment

a. Record-Keeping/Retention

Except for requirements applicable to work-study students, *see infra* Section I.F.5.b.2., there

¹³ *See* DOE Ruling, Harvard University, Leroy S. Rooker, 3/92 for a discussion concerning FERPA protection of "summary sheets" in admissions files.

are no federal record-keeping or retention requirements specific to student employees. Institutions should adhere to the requirements applicable to all of their employees. *See infra* Section I.B.

b. Privacy/Nondisclosure

FERPA applies to records relating to an individual who is employed because of his or her status as a student. 34 C.F.R. § 99.3. Thus, these records must be made available to the student and protected from disclosure to third parties. *Id.*

8. **Papers/Theses/Exams**

a. Record-Keeping/Retention

There are no federal record-keeping or retention requirements for papers, theses, or exams.

b. Privacy/Nondisclosure

Student papers and theses may contain personally identifiable information and thus be subject to FERPA. *See* 20 U.S.C. § 1232g(a)(4)(A). However, if the paper contains only "directory information" and the institution notifies its students that it has a policy of making papers and theses available to the public in its college or university library, then it may do so unless the student specifically and timely objects to disclosure of the "directory information." *See* 20 U.S.C. §§ 1232g(a)(5)(A), (B); 34 C.F.R. § 99.37.

9. **Student Affairs**

a. Record-Keeping/Retention

Federal law does not prescribe record-keeping or retention requirements for records of student affairs.

b. Privacy/Nondisclosure

FERPA applies to student affairs records insofar as these records may contain personally identifiable information regarding an individual student. *See* 20 U.S.C. § 1232(g)(a)(4)(A). However, information such as a student's involvement in activities or sports may be considered "directory information," which the institution may disclose to the public under certain conditions. *See* 20 U.S.C. §§ 1232g(a)(5)(A), (B).

10. **Transcripts**

Aside from the requirements of FERPA, there are no federal statutes or regulations that govern record-keeping or limit disclosure of transcripts.

11. *Medical/Counseling Records*

a. Record-Keeping/Retention

Federal law does not prescribe record-keeping or retention requirements for medical or counseling records.

b. Privacy/Nondisclosure

FERPA does not apply to these records, so a student does not have a right of access, but does have the right to have these records reviewed by a physician or other appropriate professional of the student's choice. 20 U.S.C. § 1232g(a)(4)(B)(iv).

12. *Foreign Students*

a. Record-Keeping/Retention

Institutions are required, under federal regulations, to maintain records on enrolled students with *F-1* and *M-1* visas for the entire period of their enrollment. 8 C.F.R. § 214.3(g). After a student's departure, these records must be maintained until the institution has made a report to the Immigration and Naturalization Service ("INS") concerning the reasons for departure. It is recommended that the institution retain these records for at least **one year** following notification of the INS.

For exchange visitors present under a *J-1* visa, federal regulations require that institutions retain all records for a minimum of **three years**. 22 C.F.R. § 514.10(h).

b. Privacy/Nondisclosure

As stated above, the INS requires institutions to maintain and provide information concerning foreign students. This information includes the following: name; date and place of birth; country of citizenship; residential address; student status (full-time or part-time); date of commencement of studies; degree program and field of study; certification for practical training; termination date and reason; certain admissions documents; credits completed each semester; and the student's I-20 ID Copy. 8 C.F.R. § 214.3(g). The institution is required to provide the information to the INS upon request and without subpoena in three working days (if on an individual student) or in ten working days (if on a class of students). *Id.*

B. EMPLOYEE RECORDS¹⁴

1. Payroll Records

As an "employer," as defined by the Fair Labor Standards Act, 29 U.S.C. §§ 201 - 219, the institution must keep payroll or other records as to all persons employed, which must contain the employee's name (as used for social security record-keeping purposes), address, sex, date of birth, occupation, hours worked each work day, total hours worked each work week, hourly rate of pay for any work week for which overtime compensation is due, total wages paid each pay period and additions to, and deductions from, such wages. 29 U.S.C. §§ 203, 211(c); *see* 29 C.F.R. § 516.2 (detailing additional requirements); For employees providing services in a "bona fide" executive, administrative or professional capacity (including academic administrative personnel), who are exempted from the provisions of the FLSA concerning reporting of minimum wage and maximum hours, employers are required to maintain the above information on each such employee, with the exception of hours worked and hourly rate of pay, as well as the bases for payment of wages to enable calculation of the employee's remuneration for each pay period, including fringe benefits and prerequisites. *See* 29 C.F.R. § 516.3; *see also* 29 U.S.C. § 213(a)(1).

The following records must be preserved for *three years*:

- the records described above concerning "bona fide" executive administrative or professional employees, 29 C.F.R. § 516.3;
- payroll records from the last date of entry;
- collective bargaining agreements referred to in 29 U.S.C. §§ 203(m), 207(b)(1), (b)(2), (e) and (f), plans, trusts and employment contracts pursuant to 29 U.S.C. § 207(e), individual employment contracts necessitating irregular hours of work (or memoranda summarizing the terms thereof, if such contract is not in writing), pursuant to 29 U.S.C. § 207(f), and certificates and notices required to be made or posted by employers, pursuant to 29 C.F.R. §§ 516.1, 516.20, 516.34; and
- total dollar volume of sales and total volume of goods purchased or received during a weekly, monthly and quarterly period.

29 C.F.R. § 516.5.

¹⁴ Note that records concerning those employed by virtue of their status as students are also covered by FERPA. *See* 34 C.F.R. § 99.3(b)(3)(ii).

The following records must be retained for *two years*:

- basic time and earning cards (recording daily or weekly working period of employees or amount of work per pay period) from the date of last entry;
- tables/schedules used to provide the rates for computing straight-time earnings, wages, salary or overtime pay from their last effective date;
- order, shipping and billing records from last date of entry;
- records of additions to or deductions from wages paid;
- individual employee pay records showing dates, amounts and types of items making up additions and deductions; and
- records used by the employer to determine the original cost, operating and maintenance cost, and depreciation and interest charges, if involved in additions or deductions from wages paid.

Id. at § 516.6.

Concerning persons who are "learners, apprentices, messengers or full-time students" employed outside of school hours in an institution, employers must maintain and retain records of the same information required with respect to other employees in the same occupation. 29 C.F.R. § 516.30. *See id.* at §§ 516.5 - 516.6. The institution also must segregate on the payroll or pay records the names and all other data concerning those individuals. *Id.*

2. Equal Pay Act

The Equal Pay Act ("EPA") prohibits, among other things, discrimination by an institution on the basis of sex in the wages paid to its employees for "equal work on jobs the performance of which requires equal skill, effort and responsibility, . . . performed under similar working conditions." 29 U.S.C. §§ 206(d); 29 C.F.R. § 1620.1 et seq.

a. Record-Keeping/Retention

To comply with the EPA, the institution must keep and retain the same records required to be maintained pursuant to the FLSA and the regulations promulgated thereunder for the same time period specified in the FLSA. 29 C.F.R. § 1620.32; *see id.* at § 516 et seq; *see supra* Section B.1.

In addition, the institution must preserve any records which are made in the ordinary course of business and relate to payment of wages, rates, job evaluations, job descriptions, merit and seniority systems, collective bargaining agreements, and description of other practices or matters

explaining the basis for a wage differential to employees of the opposite sex in the same establishment and which may be relevant to determining whether the differential is based on a factor other than sex. 29 C.F.R. § 1620.33. The latter category of records concerning the basis for payment of a wage differential must be preserved for *two years*. *Id.* at § 1620.32(c); *see* 44 U.S.C. § 3501.

3. *Affirmative Action Information*

a. *Personnel and Related records*

Any employer subject to Title VII of the Civil Rights Act of 1967, 42 U.S.C. § 2000e-17, including an institution with 15 or more employees, must maintain personnel and other records relating to hiring, promotion, demotion, transfer, layoff or termination, rates of pay and other terms of compensation for employees. 29 C.F.R. § 1602.48; *see id.* at § 1602.14.

Retention. The above records must be retained for *two years* from the date of making the record or the personnel actions involved, whichever is later. *Id.* at § 1602.49. For additional retention requirements, *see* Section B.8.

b. *EEO-6 and IPEDS Staff Survey*

Pursuant to Title VII and the Americans With Disabilities Act ("ADA"), 42 U.S.C. §§ 12101, 12117, the Equal Employment Opportunity Commission ("EEOC")¹⁵ has promulgated specific record-keeping and retention procedures relating to the composition of a work force according to race, ethnicity, sex and disabilities as defined under the law. *See* 29 C.F.R. §§ 1602.7 - 1602.56. Prior to 1993, institutions were required to maintain all records and information therefrom, "which were . . . necessary for the complet[ion] of Higher Education Staff Information Report, EEO-6." *Id.* at § 1602.48. The EEO-6 was filed biennially by every institution that had 15 or more employees. 29 C.F.R. § 1602.50.

Commencing in 1993, the Department of Education, National Center For Education Statistics (NCES), assumed the responsibility of compiling all information previously submitted on the EEO-6, on a new reporting form, the Integrated Post Secondary Education Data System Survey (IPEDS). The IPEDS thus replaces the EEO-6 report formerly required by EEOC, and institutions must now

¹⁵ The EEOC is the federal agency mandated by law to enforce Title VII, the Americans With Disabilities Act ("ADA") 42 U.S.C. § 12, 101, *et seq.*, and the Age Discrimination in Employment Act ("ADEA"), 29 U.S.C. § 621 - 634.

submit the IPEDS to the NCES on a biennial basis.¹⁶ See Letter from Roslyn A. Korb, Acting Branch Chief, IPEDS, dated December 21, 1993.

Retention. All records used to complete the EEO-6 or the new IPEDS and the information therefrom must be retained for a period of *two years* "at the central administrative office of [the institution], at the central administrative office of a separate campus or branch, or at an individual school which is the subject of the records and information, where more convenient." 29 C.F.R. § 1602.48.

c. Affirmative Action Programs Pursuant to Title VII and Federal Regulations

Any institution that is a party to a contract (or subcontract) with the federal government for services or supplies of at least \$50,000 and who has at least 50 employees must have developed and have available at each workplace a written affirmative action compliance program ("AAP") within 120 days from commencement of the contract. 41 C.F.R. § 60-1.40; *see id.* at § 60-2.2 (implementing Executive Order 11246). A report of the results of the AAP must be compiled annually and the AAP updated and summarized at that time. *Id.* at § 60-1.40(c); *see id.* at § 60-2.14.¹⁷ The major component of the AAP is a "utilization analysis," which analyzes the extent to which certain minorities are under-represented in each of the job titles in the workforce, *see id.* at § 60-2.11 (detailing procedure for utilization analysis); and goals and timetables (along with supporting data and an analysis of same) for resolving deficiencies in the AAP and making the AAP most effective. *Id.* at § 60-2.12; *see also id.* at § 60-2.13 (detailing additional components of AAP).

The OFCCP requires a periodic, internal audit and reports to insure that the goals and timetables of the AAP are being met and that the AAP otherwise is being enforced. *Id.* at §§ 60-2.22, 60-2.25; *see also id.* at § 60-1.7.

In addition, an institution that is also a "contractor" under these regulations is required to file, thirty days after receiving the contract and then annually thereafter, the EEO-6, or commencing in

¹⁶ Until the federal agencies affected by this change in responsibility for reporting workforce composition have promulgated or amended their rules, it is reasonable to adhere to provisions in the current regulations governing the time for submission of the EEO-6 (now IPEDS) and the retention requirements relating to the survey and supporting documentation. *See* 29 C.F.R. §§ 1602.48, 1602.50. Any more current or specific information may be obtained by contacting the NCES.

¹⁷ Although the regulations expressly provide that a summary of the AAP must be submitted to OFCCP annually on the anniversary date of the AAP, *see* 41 C.F.R. § 60-2.14, the OFCCP has never enforced this provision. The agency does, however, expect that the institution will update its AAP annually.

1993, the new IPEDS, report that contains information about the employer's workforce composition and affirmative action program. See 41 C.F.R. § 60-1.7; see also 29 C.F.R. § 1602.14.

d. Affirmative Action Programs Pursuant to Rehabilitation Act of 1973

Federal law also requires that any institution that is a party to a contract with the federal government for supplies or services of at least \$50,000 and has 50 or more employees must maintain an AAP, which sets forth the practices and procedures used to employ qualified handicapped individuals. See 41 C.F.R. §§ 60-741.5 (implementing 29 U.S.C. §§ 201 - 217). The AAP must contain, among other things, the employer's policies on considering qualifications of handicapped applicants and employees for job vacancies, and making accommodations to the physical or mental limitations of employees and recruitment policies. 41 C.F.R. at § 60-741.5. Internal audit and reporting systems must be developed to measure the effectiveness of an AAP and determine the need for remedial action. *Id.* at § 60-741.44(1)(h)(i).

e. Affirmative Action Programs Pursuant to Qualified Disabled Veterans and Vietnam Era Veterans Act

An institution that employs at least 50 persons and is a party to a government contract (or subcontract) of at least \$50,000 must maintain an AAP, which also must be reviewed and updated annually. See 41 C.F.R. §§ 60-250.5; 38 U.S.C. § 4212. The AAP must contain, among other things, the employer's policies and procedures for ensuring that job qualifications that tend to screen out qualified disabled veterans are related to the specific job and consistent with business necessity and safe performance of the job. See 41 C.F.R. at § 60-250.6 (detailing additional components of AAP). A contractor also must submit an annual report on the total number of disabled veterans and veterans of the Vietnam Era hired by the contractor and represented by job category in that workforce. See 41 C.F.R. §§ 60-250.1, 60-250.10 (detailing requirements of report and providing sample form). In addition, the institution must maintain records of complaints and actions taken thereunder. *Id.* at § 60-250.52.

Retention. With respect to an institution that is also a federal contractor or subcontractor, records regarding employee complaints as to violations of the regulations on Affirmative Action Programs for handicapped individuals and veterans and actions taken thereunder, as well as employment or other records required by the OFCCP or its regulations, must be maintained for a period of at least **one year**. 41 C.F.R. § 60-250.52.

It is recommended, however, that these records, as well as the other records to be submitted to OFCCP for which no retention period has been prescribed (namely AAPs required to be maintained pursuant to Title VII) be retained for **two years**. This is an appropriately conservative

period of retention, given the three-hundred-day statute of limitations for filing a charge under Title VII with the EEOC. *See* 42 U.S.C. § 2000e-5(e).¹⁸

Of course, all records relating to pending charges of discrimination and actions by the EEOC or the Attorney General should be retained until the final resolution of the action. 29 C.F.R. § 1602.14.

f. Tests and Selection Criteria

The EEOC has also prescribed record-keeping requirements on tests and other selection procedures that are used by employers as a basis for making employment decisions (e.g. hiring, promotion, demotion and retention). 29 C.F.R. §§ 1607.2(B), (C); *see id.* at § 1607.2(A) (regulations only applicable to employees subject to Title VII).¹⁹ Each employer must maintain "records or other information" that disclose the "impact" -- including any "adverse impact" -- that tests and other selection procedures have upon employment opportunities of persons by race, sex or ethnic group. *Id.* at §§ 1607.4; 1607.15(A)(2)(a); *see id.* at § 1607.4(B) (detailing racial and ethnic groups to be used).

Where there are large numbers of applicants and selection procedures are used frequently, the information may be retained on a "sample" basis (provided the sample is adequate in size and appropriate given the applicant population). *Id.* at § 1607.4(A).

Retention. An institution that uses tests or other selection procedures in making employment decisions must maintain records showing for each year:

- The number of persons hired, promoted, and terminated for each job, broken down by sex, race, and national origin;
- The number of applicants for hire and promotion classified by sex, race, and national origin; and
- The selection procedures used.

Id. at § 1607.15(A)(1), (2). Records should only be maintained for each race or national origin group that constitutes more than two percent of the labor force in the relevant labor area. If the institution has reason to believe that a selection procedure has an adverse impact, it should maintain any

¹⁸ The period of retention for records of AAPs should commence on the date that the AAP is amended or superseded.

¹⁹ Institutions which employ no more than 100 employees need only comply with simplified record-keeping procedures. *See* 29 C.F.R. § 1607.15(A)(1).

available evidence of validity for the procedure. *Id.*; see §§ 1607.7(A), 1607.15; see also 41 C.F.R. § 60-3.15(A)(1) (same requirements for contractors subject to Executive Order 11246). It is recommended that these records be retained for *two years*.

4. Family and Medical Leave Records

a. Record-Keeping/Retention

In addition to the basic personnel and payroll information required under the Fair Labor Standards Act, *see supra* Section I.B.1., the Family and Medical Leave Act ("FMLA") requires employers to keep records showing compliance with the FMLA for *three years*. For example, employers must keep records showing the dates of FMLA leave taken by employees, copies of FMLA notices given to employees, and records of any disputes with employees regarding FMLA leave. Records and files concerning employees' medical information must be kept separate from other employee records and treated as confidential except in the following circumstances: (1) supervisors may be informed of necessary work restrictions; (2) first aid and safety personnel may be informed if an employee's condition might require emergency treatment; and (3) government officials investigating FMLA compliance must be given information. These records may be kept on microfilm or other basic source document of automated data processing memory. 29 C.F.R. § 825.500.

Under the ADA and the FMLA, all employee medical records and information must be stored separately from other personnel files. They must be treated as confidential, except in the following circumstances: (1) supervisors may be informed of medically necessary restrictions and accommodations; (2) first aid and safety personnel may be notified if a disability might require emergency treatment; and (3) government officials may be given access to investigate compliance with the ADA or the FMLA. 29 C.F.R. §§ 825.500, 1630.14.

5. Immigration and Naturalization Records

Employers must verify each employee's eligibility to work under the federal immigration laws within three days of the employee's commencing work, and must fill out an Employment Eligibility Verification form ("I-9") for each employee. These forms must be kept for *three years* after the date of hire or *one year* after termination, whichever is later. 8 C.F.R. § 274a.2.

6. Medical Records

Under Occupational Health and Safety Administration ("OSHA") regulations, current and former employees or their designated representatives must be given access to their employee medical records. 29 C.F.R. § 1910.1020(e). OSHA also requires employers to keep detailed records of occupational illnesses and injuries and to make these records available to all current and former employees or their representatives. *Id.* at §§ 1904.2, 1904.7. Employers must post within the workplace yearly summaries of these records. *Id.* at § 1904.5. In addition, employers must notify

OSHA within forty-eight hours of either a fatal employment accident or one which results in the hospitalization of at least five employees. 29 C.F.R. § 1904.8.²⁰

Retention. Under OSHA regulations, employee medical records must be kept for *thirty years*, except insurance claim records, first aid records, and records regarding employees who worked for less than a year, so long as employees are given their records upon termination. 29 C.F.R. § 1910.1020(d)(i). Required logs and summaries of occupational injuries and illnesses must be kept for *five years* from the end of the year to which they refer. 29 C.F.R. § 1904.6.

7. Faculty Peer Review Materials

a. Record-Keeping/Retention

Federal law does not prescribe any specific record-keeping or retention requirements for these records. Retention of all records during employment, followed by a *seven-year* period of retention after termination, is recommended.

b. Privacy/Nondisclosure

While many educational institutions operate on the assumption that faculty peer review materials are privileged and confidential, the United States Supreme Court has specifically rejected this contention, at least in the context of a subpoena or court order. In *University of Pennsylvania v. EEOC*, 493 U.S. 182 (1990), the Court held that a university's right to academic freedom and its concerns for the integrity of the tenure selection process did not outweigh the need by the EEOC to obtain "relevant" evidence in its investigation of a sex discrimination charge. *Id.* at 193-94. Thus, institutions must disclose this information when served with a court order or subpoena.

8. Personnel Records

a. Record-Keeping

(1) **Title VII and the ADA.** Specific record-keeping requirements related to employment history, compensation, payroll, and affirmative action information are discussed in Sections I.B.1 and I.B.3. above. Records pertaining to affirmative action must be preserved at the central administrative office of the institution or at the branch or separate campus administrative office or, if more convenient, at the individual school which is the subject of the charge or action. 29 C.F.R. at § 1602.50.

²⁰ There are also extensive OSHA regulations governing reporting and record keeping concerning employees' exposure to hazardous substances, such as lead or asbestos, 29 C.F.R. §§ 1910.1000, which are beyond the scope of this article. Institutions to which such regulations might apply should consult the relevant OSHA requirements.

The institution may apply to the EEOC for an exemption from the above record-keeping requirements and request a specific alternative reporting system on the basis that complying with the record-keeping and reporting requirements would create an "undue hardship" on the institution. *Id.* at § 1602.53. The request must be made to the EEOC no less than forty-five days prior to the date that the report must be filed. *Id.*

Retention. Under Title VII and the ADA, all personnel or employment records made or kept by the institution²¹ must be retained for a period of *two years* from the date of the making of the record or the personnel action involved, whichever is later. 29 C.F.R. §1602.49. In the case of an involuntary termination, the personnel records of that individual shall be kept for *two years* from the date of termination. *Id.* Where a charge of discrimination has been filed or a civil action filed against the institution by the EEOC or the Attorney General, the institution must preserve all personnel records relevant to the charge or action until the final disposition²² of same. *Id.* at § 1602.49. The term "all relevant personnel records" would include, for example, personnel or employment records relating to the plaintiff and to all employees holding positions similar to that held or sought by the plaintiff, application forms and test papers completed by an unsuccessful applicant and all other candidates for the same position as that sought by the plaintiff. *Id.*

(2) ADEA. Pursuant to the Age Discrimination in Employment Act ("ADEA"), 29 U.S.C. §§ 621 - 634, and regulations promulgated thereunder, any institution that employs at least twenty persons must make payroll or other records for each of its employees, which contain name, address, date of birth, occupation, rate of pay and compensation earned weekly. 29 C.F.R. § 1627.1 - 1627.11; *see* 29 U.S.C. § 630(b).

Place of Keeping Records. The EEOC requires that all records be maintained at the place of employment at which the individual to whom they relate is employed, or has applied for employment, or at a central record-keeping office. 29 C.F.R. § 1627.6.

Exception to Record-Keeping and Retention Regulations (Petition Required). Any employer who, for "good cause," seeks to keep or retain records in a manner other than that prescribed in the regulations may submit a petition to the EEOC stating the reasons for such a request and the proposed alternative means of record-keeping or record retention. 29 C.F.R. § 1627.11.

²¹ Examples of such records include, but are not limited to application forms for employment positions, forms and other records governing hiring, promotion, tenure, demotion, termination, etc., and requests for reasonable accommodation. *See* 29 C.F.R. § 1602.49.

²² "Final disposition" of the charge or action means, in the case of a charge, the expiration of the statutory period within which a person can bring an action in the United States District Court, and in the case of an action already brought by an individual or the United States, the date on which the litigation has terminated. *Id.*

Retention. The institution must keep the above records for **three years**. *Id.* In addition, the following records must be retained for a period of **one year** from the date of any personnel action to which the records relate:

- job applications and other employment inquiries including records relating to failure or refusal to hire any individual;
- promotion, demotion, transfer, selection for training, layoff, recall, or discharge of any employee;
- job orders submitted to an employment agency or labor organization for recruitment of personnel;
- test papers by applicants/candidates for any position which disclose results of an employer-administered aptitude or other employment test considered in connection with a personnel action;
- the results of any physical examination when such exam is considered in connection with a personnel action; and,
- any advertisements or notices to the public or to employees relating to job openings, promotions, training programs, or opportunities for overtime work. *Id.* at §1627.3(b).

9. Tax Records

This article does not encompass the prolific requirements of the federal Internal Revenue Code and its regulations. Reporting and retention requirements for commonly kept tax records on employees are noted.²³ See also Section I.C.3. *infra* (discussion of Form 990 on page 62).

Retention. Employers must keep records of employee remuneration, taxes withheld, and payments to state unemployment compensation funds for **four years** from the date that the tax return is due or the tax is paid, whichever is later. 26 C.F.R. § 31 Subpart G.

²³ This survey does not cover the many tax record requirements to which institutions could become subject; a competent tax attorney or accountant should be consulted. For a thorough analysis of the taxation laws that apply to nonprofit corporations, as well as guidelines on reporting to the IRS and the keeping of accounting records, see Jody Blazek, *Tax Planning and Compliance for Tax-Exempt Organizations* (2d ed. 1993).

10. *Employee Benefit Plans*

a. *Record-Keeping*

(1) *Annual Report.* The plan administrator (usually the employer) of a benefit plan that is subject to the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), must file the annual report required under 29 U.S.C. § 1365 in accordance with the instructions on the applicable Form 5500 series forms. 29 C.F.R. 4065.1 - 4065.3. *See also* 26 U.S.C. § 6039D (Internal Revenue Code requirements for specified fringe benefit plan filings).

(2) *Summary Plan Description.* The plan administrator of an employee benefit plan subject to Title I of ERISA must furnish each participant covered under a plan and each beneficiary receiving benefits under a plan with a summary plan description. ERISA § 102(a)(1). In addition, the plan administrator must file a copy of the summary plan description with the Department of Labor. ERISA § 104(a)(1); 29 C.F.R. §§ 2520.104a-3, 2520.104b-2.

Such description must be provided to participants and beneficiaries no later than 120 days after a benefit plan takes effect and, in the case of new participants, within 90 days after they become eligible to participate. ERISA § 104(b)(1). Such description also must be filed with the Department of Labor no later than 120 days after the benefit plan takes effect. ERISA § 104(a)(1)(B).

New summary plan descriptions must be distributed no later than five years after the last date a change in the information that is required to be disclosed would have been reflected in the most recently distributed summary plan description. 29 C.F.R. § 2520.104b-2(b)(1). In the case of a plan to which no amendments have been made, the plan administrator must provide an updated summary plan description no later than 210 days following the end of the tenth plan year after the last date a change in the information that is required to be disclosed would have been reflected in the most recently distributed summary plan description. 29 C.F.R. § 2520.104b-2(b)(2).

(3) *Summary of Material Modifications.* A summary of material modifications to an employee benefit plan subject to ERISA must be distributed no later than 210 days following the end of the plan year in which a change occurs in the information that is required to be disclosed. 29 C.F.R. § 2520.104b-3(a). A summary of material modifications must also be filed with the Department of Labor no later than the date on which such summary must be provided to participants and beneficiaries. 29 C.F.R. § 2520.104a-7.

(4) *Notice of Reportable Events.* For any institution that has a qualified pension plan subject to Section 4021 of ERISA, the plan administrator must file with the Pension Benefit Guaranty Corporation ("PBGC") a notice of all so-called "reportable events" within thirty days after the administrator knows or has reason to know of their occurrence. 29 C.F.R. § 4043.1. (*Please note:* This requirement does not apply to tax-deferred annuity plans governed by 26 U.S.C. § 403(b).) Reportable events include, among other things, an amendment to the plan

that results in a decrease of benefits to participants, a plan's failure to meet minimum funding standards or its receipt of a minimum funding waiver, or a plan's inability to pay benefits when due. 29 C.F.R. § 4043 Subpart B.²⁴

(5) Information for Determining Benefits. Each employer must maintain records with respect to each of its employees sufficient to determine the benefits due or which may become due to such employees. ERISA § 209(a)(1).

(6) Reports to Employees. The plan administrator must make a report to each employee who is a participant under the plan and who: (1) requests such a report (only one such report is required in any twelve-month period); (2) terminates his or her service with the employer; or (3) has a one-year break in service (only one such report is required with regard to consecutive one-year breaks in service). The report must be sufficient to inform the employee of his or her accrued benefits under the plan and the percentage of such plan benefits in which the participant is vested. ERISA sec. 209(a)(1).

Retention. An employer must keep on file any employee benefit plan document (e.g., retirement and health insurance plans) and any seniority systems and merit systems that are "in writing" for the full period that the plan or system is in effect plus *one year* after its termination. 29 C.F.R. § 1627.3(b)(2). If the plan is not in writing, a memorandum outlining the plan fully, including notations of any revisions thereto, and the manner in which the plan has been communicated to employees, must be kept on file for the same period. *Id.*

If an enforcement action with respect to a benefit plan is commenced under the ADEA by the EEOC, the employer must retain the materials described in the paragraph above that are relative to such action until final disposition of the action. 29 C.F.R. § 1627.3(b)(3).

Every person subject to a requirement to file any description or report, or to certify any information under Title I of ERISA must maintain records on such matters that will provide the necessary information and data from which the information in such filings may be verified, explained, clarified, and checked for accuracy and completeness. Such records must be kept available for examination for a period of not less than *six years* after the filing date of the documents

²⁴ The notice must include certain general information including, among other things, a concise statement of the pertinent facts relating to the reportable event, a copy of the current plan document, a copy of the most recent actuarial statement and opinion relating to the plan, and a statement of any material change in the assets or liabilities of the plan occurring after the date of the most recent actuarial statement. 29 C.F.R. § 4043 Subpart B (describing additional requirements to be included in notice and additional information to be submitted with respect to certain reportable events).

or the date on which such documents would have been filed but for an exemption or simplified reporting requirement. ERISA § 107.

For plans subject to Section 4021 of ERISA, the institution must retain all records relating to the plan that are necessary to support or validate premium payments to the PBGC for a period of *six years* after the premium due date. 29 C.F.R. § 2610.11(a).

11. *Polygraph Records*

a. *Record-Keeping*

Records of polygraph testing may not be disclosed to anyone except the following: the examiner; the employer; by court order; Department of Labor officials; and to government agencies, if there is an admission of criminal conduct. 29 C.F.R. § 801.35.

Retention. Records of polygraph examinations administered to employees or prospective employees must be kept for *three years*. 29 C.F.R. § 801.30.

C. REPORTING REQUIREMENTS FOR INDEPENDENT COLLEGES INCORPORATED AS NONPROFIT CORPORATIONS OR "PUBLIC CHARITIES"

1. *Federal Income Tax Exemption - Retention of Form 990*

In order to maintain its exemption from federal income tax, an institution, as a nonprofit entity, must file the federal Form 990 on an annual basis. *See* 26 U.S.C. § 6033. The form, which must be filed within four and one-half months after the end of the fiscal year, reports the gross income, expenses and disbursements of the institution, the total of contributions and gifts received, the names and addresses of all "substantial contributors," the names and addresses of "highly compensated employees" and the compensation paid to each such individual. *Id.* at § 6033(b).

The Form 990 must be available to the public, in person or by written request, at the main campus of the institution and at any other campus having at least three employees for a period of *three years* from the filing date. 26 U.S.C. § 6104. *See id.* at § 6104(e)(1)(D) ("filing date" is last day prescribed for filing return pursuant to Section 6033); *see also* 26 U.S.C. 6104(e)(2)(A) (copies of the Form 1023, Application Seeking Tax Exempt Status pursuant to 26 U.S.C. § 501, as well as any document issued by the IRS with respect to such application also to be available for public inspection at main and branch campuses). This requirement does not apply to the Form 990T. The names and addresses of contributors to the institution are not disclosable despite their inclusion on the Form 990. 26 U.S.C. §§ 6104(e)(1)(C), 6104(e)(2)(B).

D. LICENSURE OF INDEPENDENT COLLEGES IN MASSACHUSETTS -- See Appendix A

E. ACCREDITATION

Federal financial aid programs require institutional recipients of student financial aid to be accredited by the appropriate regional accrediting agency. These agencies are private organizations with their own rules and regulations.

F. FINANCIAL AID RECORDS²⁵

A universe of laws governs record-keeping, reporting and retention of records by institutions that participate in the Higher Education Assistance programs ("HEA" or "Title IV"), provided by the federal government through the Department of Education ("the Department"). 20 U.S.C. §§ 1001 - 1146a, 34 C.F.R. §§ 600.1 - 600.41. Given the depth of detail in the statute and regulations, this section will focus only on the requirements for retention of records and a brief overview of record-keeping requirements for institutions that participate in any of the myriad of HEA programs, including separate requirements prescribed for the following major Title IV programs: Perkins Loan; Supplemental Educational Opportunity Grant Program ("SEOG"); College Work Study Program ("CWS"); Federal Family Education Loan Program ("FFEL"); and Pell Grant Program.²⁶

1. *Requirements Common to all HEA Programs, 20 U.S.C. §§ 1070a - 1099c-1*

The Department offers several programs to qualifying institutions for the purpose of assisting eligible students with payment of the cost of their education. *See, e.g.*, 20 U.S.C. § 1070a (basic educational opportunity grants); *id.* at § 1076 (supplemental educational opportunity grants); *id.* at § 1071 (Federal Family Educational Loan Program - "Federal Stafford Loans"); *id.* at § 1087aa (Federal Perkins Loan Program); *see also* 20 U.S.C. § 1091 (student eligibility requirements).

²⁵ Note that financial aid records concerning a particular student are covered by FERPA, except that information may be disclosed without the student's prior consent in connection with the student's application for or receipt of financial aid. 34 C.F.R. § 99.31(a)(4).

²⁶ All of the numerous HEA programs are described in 20 U.S.C. §§ 1070a - 1099c-1. Since it is not the purpose of this survey to provide an exhaustive review of every record-keeping and retention requirement of the federal government, for specific record-keeping requirements of these and other HEA programs, the appropriate statutory sections and regulations should be examined. In addition, for a more detailed summary of Title IV record-keeping and retention requirements, *see Guide to Record Retention Requirements* (revised ed. Jan. 1993).

These programs require participating institutions to maintain the following:

- fiscal and administrative records as necessary to ensure that funds received from the Department or from students for repayment are properly administered, *id* § 1094(a)(3); information substantiating the disclosures required to be made to a prospective student concerning costs of attending the institution, financial aid data, graduation rates, and academic information, *see* 20 U.S.C. § 1092(a)(3); 34 C.F.R. § 668.23(h)(1), as revised 59 Fed. Reg. 224.39 (April 29, 1994);
- current records of the student's admission to and enrollment status at the institution, and his/her prior receipt of financial aid, *see* 34 C.F.R. § 668.23(h)(1);²⁷ and
- financial and other records as necessary to determine "the institutional eligibility, financial responsibility and administrative capability" of the institution. *Id.* at § 668.23(h)(1).

2. Financial Records - Annual Audit

The institution must also retain detailed financial records sufficient to enable the Department to conduct an annual audit (i) of the institution as to its financial condition and (ii) a compliance audit of the institution with regard to funds obtained by it from the Department, or from a student or parent who has a loan guaranteed by the Department, 20 U.S.C. § 1094(c)(1)(A)(i); *see* 34 C.F.R. § 668.23(c), *revised*, 59 Fed. Reg. 22440 (1994). *See* 34 C.F.R. § 668.23(f) (institutional financial records which are subject to review by a state or local government pursuant to the Single Audit Act, 31 U.S.C. §§ 7501 - 7507, or are audited in accordance with the Office of Management and Budget Circular A-133, satisfy the requirements for an audit);²⁸

See also 20 U.S.C. § 1094(a)(14) (institution must develop a loan default management plan for approval by the Department); 34 C.F.R. 668.16(f) as revised 59 Fed. Reg. 22431 (April 29, 1994) (institution must maintain system to identify and correct discrepancies in information received from different sources concerning a student's application for financial aid).

²⁷ This requirement applies only to students who receive Title IV funds. *Id.*

²⁸ OMB Circular A-133 sets forth procedures and standards for conducting audits of institutions and other non-profit organizations. In addition, the institution, on request by the Department, must provide access to all records reflecting transactions with financial institutions with which the institution deposits HEA funds. 34 C.F.R. § 668.23(g).

3. *Criminal Misconduct*

The institution also must report to the Office of the Inspector General of the Department any information indicating that an applicant may have engaged in criminal misconduct, including fraud, in connection with his or her application or that any employee or agent of the institution involved in the administration of HEA funds may have engaged in fraud or other illegal conduct involving the HEA programs. 34 C.F.R. § 668.16(g).

4. *Annual Report on Athletically-Related Student Aid*²⁹

Any institution that offers athletically related student aid with federal funds must submit an annual compilation, independently audited not less than every three years, of revenues and expenses attributable to specific sports engaged in by students. 20 U.S.C. § 1094(a)(18)(A) - (B); *see* 34 C.F.R. § 668.14(d), *revised*, 59 Fed. Reg. 22425 (1994).

In addition, the institution must submit annually a report to the Secretary, including:

- the number of students who receive such aid broken down by race and sex and by type of sport;
- the graduation rate for such students;
- the number of all students, broken down by race and sex;
- the graduation rate for all students, broken down by race and sex; and
- the average graduation rates for the four most recent graduating classes of students overall, as well as for students who received athletically-related student aid broken down by race and sex and within the categories by type of sport.

See 20 U.S.C. § 1092(g)(1).³⁰

²⁹ This subsection did not take effect until the Secretary published final regulations on this subject matter pursuant to § 1092(e)(1). 20 U.S.C. § 1094(c)(9). Since such regulations were published in April 1994, *See* 34 C.F.R. § 668.14(d), the first annual report was not due until July 1, 1995. 20 U.S.C. § 1092(c)(9).

³⁰ The requirement of an annual report is waived for any institution that is a member of an athletic association or conference that has published or agreed to publish graduation rate data substantially comparable to that required under 20 U.S.C. § 1092(e)(1), § 1092(e)(6).

Retention. Institutions that participate in any of the HEA programs must retain all records required under applicable program regulations **for the longer of five years from the time that the record is created or the period of time required under the applicable program regulations.** 34 C.F.R. § 668.24, as revised, 59 Fed. Reg. 22439 (1994).

However, neither state nor federal statutes of limitations apply to actions to recover (1) money owed by borrowers on student loans from the Department, an institutional lender or a guaranty agency, or (2) grant overpayments by eligible colleges that receive grant funds under §§ 1071-99 from a lender institution or a guaranty agency. 20 U.S.C. § 1091a(a)(2). *See also United States v. Hodges*, 999 F.2d 341, 342 (8th Cir. 1993) (federal statute abrogating previous federal and all other state statutes of limitations on actions to recover defaulted student loans applied retroactively to actions pending on date of 1991 enactment).

Accordingly, although the regulations may prescribe a shorter period of retention for a particular category of records, all financial aid records concerning the amount of the loan, terms of repayment and student's repayment history should be retained for **one year** after receipt of confirmation that the student has fully repaid the loan, as evidenced by a discharge letter, or that the student has expended the funds in the grant, in conformance with the terms of the grant.

5. *Overview of Requirements of Specific HEA Programs*

a. Federal Perkins Loan Program

The Perkins Loan Program provides low-interest loans to financially needy students in order to assist them with the cost of their college education. 34 C.F.R. § 674.1. *See* 20 U.S.C. § 1087aa.

(1) Annual Reports. Each institution participating in the Perkins Program must submit an annual report to the Department containing information on loans in default either 120 days or more for loans repayable in monthly installments or 180 days or more for loans repayable in less frequent installments. 34 C.F.R. § 674.8(c).

(2) Records Relating to Receipt and Expenditure of Federal Funds. The institution must keep records pertaining to the application for and receipt and expenditure of federal funds, including original and supporting documents that show how the funds are spent. 34 C.F.R. § 674.19(e).

(3) Financial Records. The institution must establish and maintain current financial and accounting records to identify all program transactions. 34 C.F.R. § 674.19(d).

(4) Applications. The institution must maintain all loan applications for those students about whom it reports on an annual Fiscal Operations Report, as well as its Application to Participate in the Perkins Loan, SEOG, and CWS programs ("FISAP"). 34

C.F.R. § 674.19(d)(4). In addition, the institution must maintain all records supporting its application for funds under the Perkins Loan Program. 34 C.F.R. § 674.19(d)(3), (5). See 34 C.F.R. § 674.19(e)(2) (repayment history file must be maintained for each student borrower).

Retention. The institution must maintain all required records for an award year for *five years* after it submits its application, with the exception of loan records and records of expenditures questioned in audits or departmental program reviews, which must be maintained until resolution of any audit questions. 34 C.F.R. § 674.19(e).

Repayment records, including cancellation and deferment requests, must be kept for at least *five years* from the date on which a loan is assigned to the Department, canceled, or repaid. 34 C.F.R. § 674.19(e)(3)(ii).³¹

b. College Work-Study Program

The purpose of the College Work-Study Program ("CWS") is to provide part-time employment to students attending an institution who need the earnings to assist them in meeting the costs of their education. 34 C.F.R. § 675.1; see 42 U.S.C. §§ 2751- 2756b.

(1) Financial Records. The institution must keep records of the application, the receipt and the expenditure of federal funds, including all supporting and original accounting records necessary to document how funds are spent. 34 C.F.R. § 675.19(b)(2). The institution must maintain current financial and accounting records identifying all program transactions. *Id.* at § 675.19(b).

(2) Employment-Related Fiscal Records. The institution must maintain records that show that each student has worked and earned the amount being paid in the form of a certification signed by an official of the college or off-campus agency. *Id.* at § 675.19(b)(2)(i)-(iii).

(3) Applications. The institution must maintain all CWS employment applications for students about whom it reports on the annual Fiscal Operations Report and on its FISAP. *Id.* at § 675.19(b).

Retention. The institution must keep records for an award year for *five years* after it submits its Fiscal Operations Report for the award year. *Id.* at § 668.24. However, the institution must keep records on any claim or expenditure questioned by a federal audit or program review until such audit

³¹ The institution may keep the records required on microforms or in computer format. If computer format is used, the institution must maintain, in either hard copies or microforms, the source documents supporting the computer input. 34 C.F.R. § 674.19(e)(4) (Original promissory note and repayment schedule records must be kept in a locked, fire-proof container.)

questions are resolved. *Id.* at § 668.24(e)(3). *See also id.* at § 675.19(c)(3)(I) (The institution may keep the records on microforms or in computer formats, however, if latter format used, it must maintain, in either hard copy or microforms, the source documents supporting the computer input.)

c. Federal Supplemental Educational Opportunity Grant Program ("SEOG")

The SEOG Program provides grants to financially needy students attending institutions in order to help them pay the costs of their education. 34 C.F.R. § 676.1; *see* 20 U.S.C. § 1070b(a) - (b).

(1) Financial Records. The institution must keep records of the application, receipt and expenditure of federal funds, including original and supporting documents that show how funds are spent. 34 C.F.R. § 676.19(b). The institution also must maintain current financial and accounting records showing all program transactions. *Id.* at § 676.19(b)(2).

(2) Applications. The institution must maintain all SEOG applications for students about whom it reports on the Fiscal Operations Report and on its FISAP. *Id.* at § 676.19(b).

Retention. The institution must keep the records for an award year for *five years* after submitting its FISAP for that year. *Id.* at § 676.19(b)(1). Records concerning any claim or expenditure questioned by federal audit or program review must be maintained, however, until the audit questions are resolved. *Id.* at § 676.19(b)(1).

d. Federal Family Education Loan Program ("FFEL")

In these programs, collectively referred to as the "FFEL" programs, institutional lenders³² use their own funds to make loans to enable a student or his/her parents to pay the costs of a student's attendance at an institution. 34 C.F.R. § 682.100. These programs include the Federal Stafford Loan Program, the Federal Supplemental Loan for Students Programs ("SLS"), the Federal PLUS Program ("PLUS"), and the Federal Consolidation Program ("Consolidation Program"). *See id.*; 20 U.S.C. §§ 1071 - 1087-2 (outlining provisions of above four programs).

(1) Loan Records Requirements. For Stafford, SLS and PLUS loans received by or on behalf of its students, the institution must maintain a copy of the loan application or data electronically submitted to the lender sufficient to produce a "hard copy" of specific information concerning the following

³² An "eligible lender" includes national or state chartered banks, mutual savings banks, or trust companies. *See* 34 C.F.R. § 682.200.

- the terms of the loan;
- sources and amount of financial assistance available to the student and used by the institution to determine the student's estimated financial assistance for the loan period;
- the amount of the student's tuition and fees paid for the loan period and the date the student paid same;
- the amount and basis of its calculation of any refund paid to/on behalf of a student; and
- any other matter for which a record would be required in order for the institution to demonstrate compliance with applicable requirements concerning the loan.

34 C.F.R. § 682.610(b).

(2) *Student's Status Confirmation Reports.* Upon receipt by the institution of a "student status confirmation report" form from the Department or a similar student status confirmation report form from any guaranty agency, the institution must complete and return the report within thirty days of receipt to the Department or the guaranty agency, as appropriate. 34 C.F.R. § 682.610(a)(2) (detailing requirements for notification of guaranty agency of a student's failure to enroll or remain enrolled at college on a half-time basis).

Retention. The institution must keep all records required under these regulations for *five years* following the last day of the borrower's attendance. 34 C.F.R. § 682.610(a)(2).

The institution must retain for *five years* after completion copies of reports and other forms used by the institution relating to the Stafford, SLS, or PLUS Programs. *Id.* at § 682.610(a)(2).

The institution must retain all records involved in any loan, claim, or expenditure questioned by a federal audit until resolution of any audit questions. *Id.* at § 682.610(a)(3).

The institution must provide, in the event of its closure, termination, suspension or change in ownership, for retention of the records and reports required by the regulations and for access by the Department to these records. *Id.* at § 668.24. *See also id.* at § 668.24(d)(3) (institution may keep records and copies of reports on microfilm, optical disk, or other machine-readable format).

e. *Pell Grant Program*

The Pell Grant Program provides grants to assist financially needy students in meeting the cost of their college education. 34 C.F.R. § 690.1; *see* 20 U.S.C. § 1070a.

(1) Financial Records. The institution must maintain current financial records, including accounting records that identify program transactions. 34 C.F.R. § 690.81.

(2) Student Aid Reports (SAR) Data. The institution must maintain records of the SARs submitted by each student applying for a Pell Grant. *Id.* at § 690.82(a). Such records must indicate, among other items, the eligibility of all enrolled students who have submitted SARs to the institution; the name and social security number of each student; the amount paid to each student; the amount and date of every payment; and the student's costs of attendance. *Id.* See also 34 C.F.R. at § 690.83(a) (to receive a payment from the Department for a Pell Grant recipient or a corresponding decrease in the amount of federal funds received in advance for which it is accountable, the institution must submit to the Department all SAR Payment Vouchers or the equivalent as prescribed by the Department, for that particular award).

Retention. The institution must keep the above records for each year in which it has been granted an award for **five years** after the award year has ended. *Id.* at § 690.82(a). Any records concerning a claim or expenditure questioned under a federal audit must be retained until resolution of any questions. *Id.* at § 690.82(a) (The institution may substitute microform copies for original records to meet the requirements of this section).

G. GRANTS AND LOANS

This section will outline the general reporting and retention requirements required of any non-profit institution that receives a grant from the federal government.

1. *Direct Grants*³³

Grants provided to institutions directly from the federal government require that the institution-grantee maintain records that show the following:

- the amount of funds provided by the grant;
- how the funds are used;

³³ There are numerous specific federally-subsidized grant programs, all of which have specific reporting requirements. See, e.g., 20 U.S.C. § 1065 (endowment challenge grant program); 20 U.S.C. § 1067 (grants to institutions that enroll a high percentage of minority students); 20 U.S.C. § 1134c-1 (grants to encourage women and minority participation on graduate education); *id.* at § 1134v (law school clinical programs). For additional specific requirements applicable to any of the other federally-subsidized grant programs, the appropriate statute and regulations should be consulted.

- the total cost of the project;
- percentage of the cost provided from other sources;
- compliance with the requirements of the grant;
- significant project experiences and results; and
- other records necessary to facilitate the audit required of grantees that are also non-profit organizations, pursuant to 34 C.F.R. § 74.61 (see below).

34 C.F.R. §§ 75.730 - 75.732.

2. *Non-Profit Grantees*

The institution, as a non-profit organization, also must maintain the following financial records:

- current and complete disclosure of financial results of each program or project in accordance with the financial reporting requirements of the grant;
- records which identify the sources and application of funds for grant-supported activities; and
- accounting records, which must be supported by source records such as canceled checks, paid bills, payables, contract and grant award documents.

34 C.F.R. § 74.61. *See id.* (describing other financial management standards for grantees). *See also* 34 C.F.R. at §§ 74.70 - 74.76 (detailing financial reporting requirements for grantees).

3. *Audit*

The institution must obtain an audit as required in accordance with the standards set forth in OMB Circular A-133. *Id.* at § 74.26.³⁴

Retention. There are two different retention periods provided, respectively, by 34 C.F.R. §§ 74.1, which establishes uniform requirements for Department grantees that are non-profit organizations ("the non-profit grantee regulations"), and 34 C.F.R. §§ 75.1 - 75.910, which sets forth general regulations for all direct grant programs from the Department.

³⁴ *See supra* note 28.

The non-profit grantee regulations require that all financial and programmatic records, supporting documents, statistical records, and other records of recipients "reasonably pertinent" to the grant be retained for *three years* from the "starting date," which is determined by how often the grant is continued or renewed. 34 C.F.R. § 74.53.³⁵

The general regulations covering all direct grant programs provide that all records must be retained "for *five years* after the completion of the activity for which [the institution] uses grant funds." 34 C.F.R. §§ 75.0 - 75.910. Because many of the same records are required to be kept under the general and the non-profit grantee regulations, it is recommended that the longer *five year* period of retention be used, commencing from the "starting date" as defined by 34 C.F.R. § 74.22. See *supra* note 49.

An exception to the general rule of retention occurs when any litigation, claim, audit or other action concerning the records is commenced during the retention period. In such a case, the records must be retained until "completion of the action and resolution of all issues which arise from it," or until the end of the [three]-year period, whichever is later." 34 C.F.R. § 74.53(b)(1). See *id.* at § 74.53(f) (when records are transferred to or maintained by the awarding party, the three-year retention period is not applicable to the grantee).

4. *Sponsored Research*³⁶

In general, the regulations of the sponsoring federal agency and the terms of the grant should be consulted for the applicable retention rules.

H. LAW ENFORCEMENT RECORDS

1. *"Student Right-to-Know," "Crime Awareness," and "Campus Security" Acts*

³⁵ For a grant continued or renewed at annual or other intervals, the retention period for the records of each funding period commences on the date that the grantee submits to the Department its last (or single) expenditure report for that period. For a grant that is continued or renewed quarterly, the retention period starts on the date that the grantee submits to the Department its expenditure report for the final quarter of the federal fiscal year. In all other cases, the retention period commences on the date that the grantee submits its final expenditure report to the Department. 34 C.F.R. § 74.22 (detailing narrow exceptions to the above "starting dates").

³⁶ Many institutions receive funds through federally sponsored research grants (such as grants from the National Institutes of Health to perform biomedical research).

a. Annual Security Report

Every institution that receives federal financial assistance for students pursuant to 20 U.S.C. §§ 1070a, *et seq.*, must prepare and distribute to all current students and employees and, upon request, to any applicant for enrollment or employment, an annual security report that details both campus security policies and crime statistics of that institution. 20 U.S.C. § 1092(f)(5)(B). An institution must comply separately with the requirements of this section for each campus. *Id.*

The campus security policies must include the following:

- procedures for students and others to report criminal actions or other emergencies on campus;
- policies concerning the institution's response to such reports;
- current policies concerning security and access to campus facilities;
- current policies concerning campus law enforcement, including enforcement authority of security personnel and their relationship with state and local police agencies;
- programs that inform students and employees about campus security procedures and practices and the prevention of crime;
- policies concerning monitoring of criminal activities at off-campus student organizations which are recognized by the institution and are engaged in by students attending the institution; *see* 20 U.S.C. § 1092(f)(1)(A),(E),(G); and
- policies regarding possession, use and sale of (i) alcoholic beverages and enforcement of state underage drinking laws; (ii) illegal drugs and enforcement of state and federal narcotics laws; and (iii) a description of any drug/alcohol abuse education programs.

See 20 U.S.C. § 1092(f)(1)(H); 20 U.S.C. § 1145g. *See also* 34 C.F.R. §668.47, *as revised*, 59 Fed. Reg. 22318 (Apr. 1994) (detailing additional requirements for annual security report).

In addition, the institution must include, in the annual security report statistics, the following criminal offenses occurring on campus: murder, sexual offenses, robbery, aggravated assault, burglary, and motor vehicle theft. 20 U.S.C. § 1092(f)(1)(F). *See also* 34 C.F.R. § 668.47(a)(6) (requiring statistics on the crimes of murder, forcible rape, and aggravated assault that evidence prejudice based on race, religion, sexual orientation, or ethnicity as prescribed by the Hate Crimes Statistics Act, 28 U.S.C. § 534).

The institution must also include in the report statistics on the number of arrests for the following crimes committed on campus: liquor law violations, drug abuse violations, and weapons possessions.³⁷ 20 U.S.C. § 1092(f)(1)(H). *See also* 34 C.F.R. § 668.47(a)(8)(ii), *as revised*, 59 Fed. Reg. 22319 (1994) (requiring statistics concerning same crimes that demonstrate prejudice based on race, religion, sexual orientation, or ethnicity as prescribed by the Hate Crimes Statistics Act).

Every institution must timely report to the campus community on crimes (referred to in § 1092(f)(1)(F)) considered to be a threat to other students and employees that are reported to campus police or local law enforcement agencies. 20 U.S.C. § 1092(f)(3).

As part of the annual security report, the institution must develop and distribute a statement of policy concerning the following:

- the institution's campus sexual assault program which shall be aimed at the prevention of sex offenses; and
- the procedures to be followed once a sex offense has occurred.

Id. at §1092(f)(7)(A); *see id.* at 1092(f)(7)(B) (detailing areas to be addressed in sexual assault and awareness policy, including internal procedures to be followed in the event that a sex offense occurs on campus). *See also* 34 C.F.R. § 668.47, *as revised*, 59 Fed. Reg. 22318 (1994) (prescribing additional requirements for campus disciplinary procedures).

Retention. Any institution that receives federal financial assistance for students pursuant to 20 U.S.C. §§ 1070a - 1099 must compile and retain statistics on enumerated criminal offenses that occur on campus "during the most recent calendar year and the two preceding calendar years" for which data of such offenses are available. Accordingly, the institution must retain the statistics on criminal offenses on campus for a period of *three years* from the date that the data was first available. 20 U.S.C. § 1092(f)(1)(F).

³⁷ The institution must, upon request, submit to the Department a copy of the statistics on on-campus crimes compiled pursuant to 20 U.S.C. §§ 1092(f)(1)(F), (H); *id.* at 1092(f)(4). The statistics are to be compiled in accordance with the definitions used in the Uniform Crime Reporting System of the Department of Justice, Federal Bureau of Investigation, with modifications in such definitions implemented pursuant to the Hate Crime Statistics Act. *Id.* at 1092 § (f)(6).

I. NON-DISCRIMINATION IN EDUCATION RECORDS AND REPORTS

1. Title IX, 20 U.S.C. §§ 1681 - 1688

Title IX prohibits an "educational institution"³⁸ from, among other actions, discriminating or denying benefits or participation "on the basis of sex" with respect to any education program or activity receiving federal financial assistance.³⁹ 20 U.S.C. § 1681. Some courts have construed Title IX to prohibit sexual harassment perpetrated by faculty or staff of an educational institution upon its students. See *Lipsett v. University of Puerto Rico*, 864 F.2d 881, 891 (1st Cir. 1988); *Alexander v. Yale Univ.*, 459 F. Supp. 1, 4 (D. Conn. 1977), *aff'd*, 631 F.2d 178 (2d Cir. 1980).

a. Periodic Compliance Reviews

The Department of Education periodically conducts "compliance reviews" of the practices of recipients of federal funding to determine their compliance with Title IX and other federal laws. See 34 C.F.R. §§ 106.71, 100.6. Institutions should validate the accuracy of the data provided to the Office for Civil Rights pursuant to such compliance reviews. Figures provided to the OCR during its Title IX compliance review of an institution can be used by courts to determine whether the institution is in compliance with federal regulations requiring equal athletic opportunity for members of both sexes. See *Roberts v. Colorado State Univ.*, 814 F. Supp. 1507, 1511-12 (D. Colo.), *aff'd in part & rev'd in part*, 998 F.2d 824, *cert. denied*, __ U.S. __, 114 S. Ct. 580 (1993).⁴⁰

³⁸ An "educational institution" includes public or private colleges, except that with respect to admissions, the statute applies only to institutions of graduate higher education, vocational education, professional education, and public institutions of higher education. 20 U.S.C. § 1681(a)(1). See also *id.* at § 1681(a)(2)-(5) (Other exemptions for educational institutions include institutions planning a change from a single sex student body to a coeducational one and institutions controlled by a religious organization.)

³⁹ "Program or activity" and "program" mean, among other things, all of the operations of "... a college, university, or other post-secondary institution . . ." "any part of which is extended Federal financial assistance," except that this does not include any operation of a religiously controlled entity if the application of the requirement would be inconsistent with the tenets of that religious organization. 20 U.S.C. § 1687.

⁴⁰ With the objective of complying with Title IX and the regulations promulgated thereunder, the institution must (1) evaluate its current practices and policies and the effects of same concerning admission and treatment of students and employment of all personnel working in relation to the federally-assisted educational program or activity; (2) modify any policies and practices that "do not or may not" comply with the requirements of Title IX; and (3) take remedial action to eliminate any discriminatory effects of adherence to the above policies and practices. 34 C.F.R. § 106.3(c). The regulations required that the self-evaluation be completed

b. Grievance Procedure

The institution must adopt and publish a grievance procedure that provides for efficient and fair resolution of student and employee complaints alleging any action in violation of Title IX. 34 C.F.R. § 106.8(b).

Retention. Any records relating to alleged Title IX violations should be retained for *three years* after the date of the alleged discrimination, the period of limitations for commencing an action pursuant to 42 U.S.C. § 1983 premised on a violation of Title IX. See *Bougher v. Univ. of Pennsylvania*, 882 F.2d 74, 78 (3d Cir. 1989) (holding that state statute of limitations for personal injury actions provides limitations period for initiating § 1983 action).

2. Title VI - Nondiscrimination in Federally-Subsidized Programs

Title VI of the Civil Rights Act of 1964 prohibits an institution from discriminating against a person on the basis of that person's "race, color or national origin," in regard to "any program or activity receiving Federal financial assistance." 42 U.S.C. § 2000d.⁴¹ Title VI is enforced by a uniform set of regulations included within the body of regulations of every federal agency that provides federal financial assistance to any program or activity "by way of grant, loan or contract, other than a contract of insurance or guaranty. . . ." *Id.* at §2000d-1; see e.g., 34 C.F.R. §§ 100.1 - 100.13 (Department of Education regulations). As an example, this article will refer to the Title VI regulation applicable to the Department of Education. 34 C.F.R. §§ 100.1, *et seq.*

a. Record-Keeping

The Department will periodically conduct compliance reviews of recipients of federal assistance to discern their compliance with Title VI and the regulations. See, e.g., 34 C.F.R. §100.7(a).

one year after the effective date of the regulations or by July 21, 1976. *Id.* at §§ 106.3, 106.1. Upon request, the institution must provide to the Department a description of the modifications of the policies and practices and of any remedial action taken pursuant to § 106.3(c). *Id.* at § 106.3(d). The institution must retain for at least *three years* following the completion of the self-evaluation a description of any modifications made to the policies and practices of the institution pursuant to § 106.3(c)(2) and any remedial action taken pursuant to 106.3(c)(3). 34 C.F.R. § 106.3(d).

⁴¹ An institution, as a recipient of federal funds, violates this section by denying a student, employee, or other person participation in, or the benefits of, the federally subsidized program or activity, or subjecting the person to discrimination under such program or activity. 42 U.S.C. § 2000d.

b. General Compliance Reports

The institution must keep and submit to the agency providing financial assistance (for example, the Department of Education) "compliance report[s]" containing information that the Department considers necessary to determine whether the institution is in compliance with the requirements of the Act and its regulations. See 34 C.F.R. § 100.6. As an example, the institution must maintain "racial and ethnic data showing the extent to which members of minority groups are beneficiaries of and participants in federally-assisted programs." *Id.* (providing that, where institution extends federal financial assistance to any other recipient, that recipient must submit such compliance reports to the institution as are necessary to enable the institution to fulfill its reporting obligations under the regulation).

c. Privacy/Nondisclosure

Any information "of a confidential nature" obtained in the course of a compliance evaluation or enforcement action shall not be disclosed by the Department, except as necessary in formal enforcement proceedings or where otherwise required by law. 34 C.F.R. § 100.6(c). (providing that considerations of confidentiality or privacy may not bar the Department from investigating or seeking to enforce compliance with Title VI and the regulations).

d. Notice to Beneficiaries and Participants of Legal Protections of Title VI

The institution must inform participants, beneficiaries and other interested persons of the provisions of this regulation and its applicability to the program for which the institution receives financial assistance in such manner as the Department determines necessary to inform such individuals of the protection of Title VI and the regulations. 34 C.F.R. § 100.6(d).

Retention. Any records relating to alleged violations of Title VI should be retained for **three years** after the date of the alleged discrimination, the period of limitations for commencing an action pursuant to 42 U.S.C. § 1983 premised on a violation of Title VI. See *Wilson v. Garcia*, 471 U.S. 261, 280 (1985) (holding that state statute of limitations for personal injury actions provides limitations period for § 1983 actions).

It is recommended that records of complaints of Title VI violations filed with the Department that are administratively resolved be retained for at least **one year** following final resolution. See 34 C.F.R. § 100.11 (holding that decisions of Department on complaints of Title VI violations are subject to review pursuant to Administrative Procedure Act, 5 U.S.C. §§ 701 - 706); 5 U.S.C. § 704.

3. Rehabilitation Act of 1973

The Rehabilitation Act of 1973, 29 U.S.C. § 794 (the "Act"), prohibits discrimination against any "otherwise qualified handicapped individual" on the basis of his/her handicap with respect to

"any program or activity receiving Federal financial assistance. . . ." 29 U.S.C. § 794 (a); 34 C.F.R. § 104.1 - 104.61.⁴²

The regulations promulgated pursuant to the Act⁴³ require the following record-keeping and reporting:

a. Grievance Procedure

An institution must adopt "grievance procedures" that provide for prompt and fair resolution of complaints relating to alleged violations of the Act. 34 C.F.R. § 104.7(b).

b. General Compliance Records

The regulations require that every recipient keep and submit records to the applicable agency (e.g., the Department of Education) containing such information as the Department may determine to be necessary to discern whether the recipient has complied with the regulations. In general, the records must contain "racial and ethnic data showing the extent to which members of minority groups are beneficiaries of and participants in federally-assisted programs." 34 C.F.R. § 100.6(b). (providing that, where institution extends federal financial assistance received to any other recipient, latter must submit such compliance reports to institution as necessary to enable institution to fulfill its reporting obligations under this regulation).⁴⁴

Retention. The institution must retain for a period of **three years** following completion of its self-evaluation (*see infra* note 62), and must make available for "public inspection" the following: (i) a list of the interested persons consulted; (ii) a description of the areas analyzed and problems identified in compliance with the Act; and (iii) a description of any modifications made and any remedial action taken. 34 C.F.R. § 104.6(c)(2).

⁴² The term "program or activity" is defined, in relevant part, as "all of the operations of . . . a college, university, or other post-secondary institution . . ." 29 U.S.C. § 794(b)(2)(A).

⁴³ One set of regulations to enforce the Act has been promulgated and included within the body of regulations of each Executive Branch agency. For illustrative purposes, the article will cite only to the regulations of the Department of Education.

⁴⁴ As of May 10, 1982, the institution must have evaluated, with the assistance of handicapped persons and other "interested persons," its current policies and practices and the effects of same "that do not or may not" comply with the Act. 34 C.F.R. at § 104.6(c). The institution then, after consultation with such "interested persons," must modify the policies and/or procedures that do not meet the Act's requirements and take remedial action to eliminate any discriminatory effects that have resulted from adherence to the policies and practices. *Id.*

Any records relating to alleged violations of the Rehabilitation Act should be retained for a period of *three years* after the date of the alleged discrimination, the period of limitations for commencing an action under § 794a.⁴⁵ It is also recommended that records of complaints of violations filed with the Department that are administratively resolved be retained for at least one year following final resolution. See 34 C.F.R. § 100.11; 5 U.S.C. §§ 701, 704.

4. *Americans With Disabilities Act (ADA)*

a. Record-Keeping

As discussed previously, the ADA requires that information on the medical condition or history of any applicant or employee must be collected and maintained on separate forms and in separate medical files and be treated as confidential medical records, with certain narrow exceptions. See Section I.B.4.a.; 29 C.F.R. § 1630.14 (disclosure permitted to supervisors concerning necessary accommodations or restrictions on employee's duties; first aid and safety personnel if emergency treatment of disability may be required; and government officials investigating compliance with the ADA).

Retention. The ADA does not prescribe specific requirements for retention of medical records.

J. MISCELLANEOUS RECORDS

1. *Trusts/Bequests*

Other than tax records required by the Internal Revenue Service and the State Department of Revenue, there are no specific record-keeping or retention requirements under federal law for property held in trust for the benefit of an institution or bequests of money to the institution. Because there is not a statute of limitations on actions to terminate a trust or by a legatee to recover personal property under a will, all records relating to trusts and bequests under wills should be retained *indefinitely*.

⁴⁵ Procedures and remedies set forth in Title VI of the Civil Rights Act govern action by person aggrieved by action or failure to act by "any recipient of federal assistance" under 29 U.S.C. § 794; *Wilson v. Garcia*, 471 U.S. at 280 (state statute of limitations for personal injury actions provides limitations period for actions under 42 U.S.C. § 1983); 34 C.F.R. § 104.61 (procedures applicable to Title VI regulations apply to regulations under Rehabilitation Act). See also fn. 44.

2. *Real Property*

Aside from the tax law, federal law does not require any specific record-keeping or retention of records concerning interests in real property retained by an institution. It is recommended, however, that copies of record evidencing such interests be retained *indefinitely* and in a segregated file.

3. *Voting Lists* -- See Appendix A

4. *Register of Nonresident Students who Maintain Motor Vehicles Registered out of State* -- See Appendix A

5. *Drug-Free Schools and Communities Act*

a. *Record-Keeping*

Any institution that receives federal financial assistance must "adopt and implement a drug prevention program" to prevent the unlawful use of drugs and alcohol by students and employees on campus premises or as part of any of its activities. 20 U.S.C. 1145g, 34 C.F.R. § 86.1.

The institution must provide a written certification that it has adopted and implemented such a program. 20 U.S.C. § 1145g(a). See 34 C.F.R. §§ 86.3(b), 86.4.

The drug prevention program must be distributed in writing to each student and employee at the institution and must consist of the following:

- standards of conduct that prohibit unlawful possession and use of "illicit drugs and alcohol" by students and employees on institutional property or as a part of any institution-sponsored activities;
- an explanation of the legal sanctions under local, state, or federal law for the unlawful possession or use of such drugs and alcohol;
- a description of the health risks associated with the use of such drugs and alcohol;
- a description of the drug or alcohol counseling, treatment, or rehabilitation programs that are available to students or employees;
- a statement that the institution will impose disciplinary sanctions on students and employees and a description of those sanctions; and

- a biennial review by the institution of its program to determine its effectiveness, to implement any needed modifications, and to ensure that the disciplinary sanctions are consistently enforced.

34 C.F.R. § 86.100.

Retention. The institution must retain records documenting the drug prevention program, the results of the biennial review, and any other records related to compliance by the institution with the Act for **three years** after the fiscal year in which the record was created. *Id.* at § 86.103(b) If any action, such as an audit or litigation, begins before the expiration of the three-year period, the institution must keep the records until resolution of the action. *Id.*

APPENDIX A

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Appendix A

I. RECORD-KEEPING AND REPORTING REQUIREMENTS APPLICABLE TO INDEPENDENT AND PUBLIC INSTITUTIONS IN MASSACHUSETTS⁴⁶

A. STUDENT RECORDS

1. *Summary of Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g* -- See page 1 for more information.
2. *Student Access to Records* -- See page 1 for more information.
3. *Privacy and Non-Disclosure of Records* -- See page 2 for more information.
4. *Admissions*

Pursuant to the Fair Educational Practices Act ("FEPA"), Mass. Gen. L. ch. 151C, §§ 1 - 5, the Massachusetts Commission Against Discrimination ("MCAD")⁴⁷ has promulgated regulations that require institutions to maintain "[a]ll records of all applicants for admission" to the institution. Mass. Regs. Code tit. 804, § 4.01(4). See Mass. Gen. L. ch. 151C, § 5. These records must be retained for *three years* after the date of application, unless an action involving an institution is pending before the MCAD, in which case the records must be kept until termination of the pending action. Mass. Regs. Code tit. 804, § 4.01(4).

5. Departmental Files

There are no specific requirements concerning record-keeping or retention. Records should be retained for the duration of student's enrollment. Subsequent to that, a *seven-year* retention period is recommended for departmental files that are reasonably likely to form the basis of, or bear upon, a dispute.

⁴⁶ Unless otherwise noted, the laws and statutes cited in this Appendix are applicable only to institutions within the state of Massachusetts, and are included solely for purposes of example, illustration, and comparison. Where no description is included, federal laws apply. Readers should consult the laws and statutes pertaining to their particular state for comparable information and regulations.

⁴⁷ The MCAD is the agency with authority to enforce the Massachusetts anti-discrimination statutes, Mass. Gen. L. ch. 151B, §§ 1 - 10, 151C, §§ 1 - 5.

6. *Student Disciplinary Records*

There are no specific requirements for record-keeping or retention. A *seven-year* retention period is recommended.

7. *Student Employment*

There are no statutes or regulations that specifically prescribe record-keeping for student employment. See *infra* Section I.B., for required record-keeping on employees, which would apply equally to student employees.

8. *Papers/Theses/Exams*

There are no Massachusetts requirements for record-keeping or retention with respect to papers, theses and exams. (Note, however, the requirements with respect to the retention of grades under Transcripts, *infra* Section I.A.10). It is recommended that all papers, theses and exams be retained for the duration of the student's enrollment. However, for those papers, theses and exams which are reasonably likely to form the basis of, or bear upon, a dispute, a *seven-year* retention period is recommended.

9. *Student Affairs*

There are no requirements for record-keeping or retention. It is recommended that student affairs records be retained for the duration of the student's enrollment. However, for those records that are reasonably likely to form the basis of, or bear upon, a dispute, a *seven-year* retention period is recommended.

10. *Transcripts*

a. *Record-Keeping*

Upon request by a current or former student, an institution must furnish a written transcript of the student's record free of charge. Mass. Gen. L. ch. 71, § 34A. The institution may charge a fee for a photocopy or additional transcript.⁴⁸

⁴⁸ One Superior Court decision in Massachusetts has held that an institution may satisfy the statutory requirements by providing an "unofficial" transcript, but is not obligated to provide an official transcript if the student has not satisfied his or her financial obligations to the institution. *Stevens v. Boston University*, No. 44256 (Mass. Super. Ct. 1982).

Failure by the institution to furnish a transcript or copy within thirty days enables the student to file a civil action in Superior Court seeking an order for delivery of the transcript. *Id.* at § 34B. Noncompliance with any such order issued by the court may be deemed a contempt of court. *Id.*

Retention. No specific period of retention is required. Given the statutory right of access of a former student to his or her transcript, it is recommended that transcripts be retained indefinitely.

11. *Medical/Counseling Records*

a. Privacy Issues Concerning Medical Records

Although there are no record-keeping requirements that relate directly to medical records of students, the confidential nature of medical records implicates issues of privacy and nondisclosure.

(1) Statutory Privilege Prohibiting Disclosure of Records by Psychiatrist/Psychologist

Medical records retained by the institution as part of a counseling or other health program may be subject to Mass. Gen. L. ch. 233, § 20B. The statute enables a "patient"⁴⁹ to refuse to disclose, and to prevent a "psychotherapist"⁵⁰ or other witness from disclosing without the consent of the patient, in any pretrial, court, administrative, or legislative proceeding, any oral or written communications between the psychotherapist and the patient relating to the diagnosis or treatment of the patient's mental or emotional condition. *See id.* Accordingly, any student health records containing such material should be clearly labeled "Privileged and Confidential," retained in a secured area, and not disclosed to anyone absent the written consent of the student patient, unless disclosure is otherwise permitted under this statute.

(2) Statutory Right Against Invasion of Privacy

An individual has a statutory right against "unreasonable, substantial or serious interference with his privacy." Mass. Gen. L. ch. 214, § 1B. The statute has been interpreted to proscribe disclosure of facts about an individual of "a highly personal or intimate nature when there exists no legitimate [countervailing] interest." *Bratt v. International Business Mach. Corp.*, 392 Mass. 508, 467 N.E.2d 126, 134 (1984). A violation of the statute may be remedied by damages as well as injunctive relief. Disclosure of confidential medical information to another individual without the consent of the student may constitute an invasion of privacy actionable under Mass. Gen. L. ch. 214,

⁴⁹ A patient is defined as one who communicates with a psychotherapist "during the course of diagnosis or treatment." Mass. Gen. L. ch. 233, § 20B.

⁵⁰ A psychotherapist is defined as a licensed psychiatrist or psychologist or specially licensed psychiatric nurse. *Id.*

§ 1B. *See Tower v. Hirschhorn*, 397 Mass. 581, 492 N.E.2d 728, 732 (1986); *see also Bally v. Northeastern Univ.*, 403 Mass. 713, 532 N.E.2d 49, 53-54 (1989) (holding that, absent allegation of public disclosure of confidential information, no invasion of privacy resulted from university's drug testing program).

Accordingly, unless there are legitimate countervailing reasons, such as the health or well-being of the student or a compelling governmental public interest, no identifiable medical information in a student's records should be disclosed to any other individual without the consent of the student. *See Bratt v. International Business Mach. Corp.*, 467 N.E.2d 126, 137 (1984) (holding that balancing of employer's legitimate interest in disclosure of records against substantiality of employee's privacy interest will determine whether Mass. Gen. L. ch. 214, § 1B is violated); *Folmsbee v. Tech Tool Grinding & Supply, Inc.*, 417 Mass. 388, 630 N.E.2d 586, 589-99 (1994). In a situation in which disclosure is not necessary to ensure the well-being of a student, absent the consent of the student, the institution would be well-advised, prior to disclosure, to consider seeking a declaratory judgment from the Superior Court on the issue.

(3) Privileged Communications from Clergy

A priest, rabbi, or ordained minister is prohibited from disclosing a confession made to him/her when enjoined by the rules of the religious body with which she/he is affiliated, nor shall she/he testify as to any communication made by a person seeking religious or spiritual advice absent the consent of that person. Mass. Gen. L. ch. 233, § 20A. Thus, any counseling records made by college clergy should be kept in a secured area, marked "Privileged and Confidential" and, unless a compelling reason such as student health or safety dictates otherwise or unless disclosure is required by state or federal law, not disclosed without the consent of the student.

Qualifying Student Health Insurance Program. Every independent institution in Massachusetts must require its students to participate in a "qualifying student health insurance program" ("the program"). Mass. Gen. L. ch. 15A, § 18. *See also* Mass. Gen. L. ch. 118F, §§ 1, 6.

Annual Report. Each institution must submit an annual report to the Department of Medical Security or its successor, describing its procedures for compliance with this section. Mass. Gen. L. ch. 15A, § 18; *see* § 3.06. The institution also must report certain information to the Department of Medical Security or its successor. *See* Mass. Regs. Code tit. 117 (Among other items, institutions must report the name of the insurance company underwriting the program; the annual premium cost per student for the program; a description of all important terms of the program; and the total number of full-time and part-time students who must participate in the program or another program with comparable coverage.)

In addition, each institution must maintain the following records to show compliance with the program:

- a copy of the health insurance policy offered to students as the qualifying student health insurance program;
- informational materials disseminated by the institution that describe the program and the student's obligation to participate in it; and
- waiver requests submitted pursuant to Mass. Regs. Code tit. 117, § 3.04. *See id.* at § 3.04(2). Students may waive participation in the program, but only if they certify in writing and on an annual basis that they are participating in a health insurance plan with comprehensive coverage.

Each institution should maintain careful records of all such waivers and other required documentation. An institution may preclude imposition of a monetary penalty for a purported failure to adhere to its responsibilities pursuant to Mass. Gen. L. ch. 15A, § 18, if it can show that, in not extending coverage to a particular student, it relied in good faith on the written waiver or other statement provided by the student concerning his/her own health insurance status. *Id.* *See* Mass. Regs. Code tit. 117, § 3.03(b).

Retention. Records required to be kept pursuant to Mass. Gen. L. ch. 15A, § 18 and Mass. Regs. Code tit. 117, § 3.06 must be retained for at least *three years*.

12. *Foreign Students*

There are no requirements for record-keeping or retention, other than those described above that apply to all students.

B. EMPLOYEE RECORDS

1. *Payroll Records*

As a general rule,⁵¹ Massachusetts employers must keep payroll records for *two years* from the date the record is created. For this purpose, payroll records are defined as a record of the name, address, and occupation of each employee, as well as the amount paid and hours worked by each employee. Mass. Gen. L. ch. 151, § 15.

2. *Equal Pay Act*

See page 9 for description.

⁵¹ Certain rules, such as tax or unemployment compensation reporting requirements, may make it necessary for an employer to keep these records for a longer period.

3. *Affirmative Action Information*

The MCAD has promulgated regulations that apply to institutions and restrict both the type and the content of employment records that may be maintained⁵²:

a. *Limitations on "Pre-Employment" Records Maintained Concerning Protected Characteristics*

No "pre-employment" records that indicate the "race, color, religious creed, national origin, sex or ancestry" of a job applicant shall be made or maintained, *unless*:

- the records are being prepared for the purpose of legitimate research;
- the records are maintained for purposes of complying with an affirmative action program approved by the federal or state government; or
- the MCAD has given prior, written consent to keep such a record.

804 Mass. Regs. Code tit. 804, § 3.01(5).

b. *Limitation on "Post-Employment" Records*

An employer may acquire information concerning the above protected characteristics of employees only upon direct request by a federal or state agency or with the approval of the MCAD in each instance. *Id.* at § 3.01(6). All such post-employment records must be kept *separate* from the employee's personnel records or other records available to those who make personnel decisions. *Id.*

c. *Fair Employment Practices Statute: Mass. Gen. L. ch. 151B, §§ 1 - 10*

Independent and public institutions fall within the definition of "employer" in the Fair Employment Practices Statute, Mass. Gen. L. ch. 151B, §§ 1 - 10, the law that proscribes, among other things, discrimination in employment based on "race, color, religious creed, national origin, sex, sexual orientation . . . or ancestry" of an individual.⁵³ *Id.* at §§ 1, 4.

⁵² Note that Massachusetts law does require employers to keep records of the ages of their employees. *See infra* Section I.B.8.

⁵³ An important exemption from the statute exists for independent institutions that are operated in connection with a "religious organization" and which limit admission to persons of that religion. Mass. Gen. L. ch. 151B, § 1. Such institutions may give preference in employment to

Although the Fair Employment Practices Statute does not require submission of an affirmative action plan, Section 4 authorizes the MCAD to promulgate regulations that require an employer to keep records on the composition of its workforce relative to "race, color or national origin" and to make periodic reports to the MCAD to verify the employer's compliance with the provisions of the Fair Employment Practices Statute. *Id.* at § 4. To date, no regulations have been promulgated.⁵⁴

d. *Affirmative Action Program*

Upon request by the MCAD, an institution must submit an Affirmation Action Program for approval to that agency. Mass. Regs. Code tit. 804, § 4.02(2). The Program must address, among other things, purchasing, construction, recruiting, and hiring "of nonprofessionals and professionals." *Id.* (Plan also must address admission of students and "teacher training.")

4. *Family and Medical Leave Records*

Mass. Gen. L. ch. 149, § 105D, which guarantees an eight-week leave of absence to a female employee after giving birth or adopting a child, has no record-keeping or retention requirements. Adherence to the federal retention requirements for records related to the FMLA is recommended.

5. *Immigration and Naturalization Records*

Employers must verify that prospective employees are authorized to work in this country. Mass. Gen. L. ch. 149, § 19C. An employer will not be liable under this statute if it obtains a declaration from the employee, signed under the pains and penalties of perjury, stating that he or she is a citizen. Employers must retain copies of these declarations of citizenship, although the regulation does not specify for how long. Mass. Regs. Code tit. 453, § 3.03.

6. *Medical Records*

There are no statutory or regulatory requirements that relate specifically to the maintenance or retention of employee medical records. However, the inclusion of medical data in an employee's personnel record implicates issues of privacy and confidentiality.

members of that religion, or may take action in regard to employment matters based on the tenets of the religion. *Id.*

⁵⁴ In addition, the requirements for record keeping prescribed by the MCAD must "impose no greater burden or requirement on the employer" than the comparable requirements prescribed by the EEOC. Mass. Gen. L. ch. 151B, § 4.

a. Prohibition on Disclosure of Medical Information

An employer's disclosure to another individual of medical information concerning an employee and relayed by that employee to a physician may constitute an unwarranted invasion of privacy in violation of Mass. Gen. L. ch. 214, § 1B. See *Bratt v. International Business Mach., Corp.*, 392 Mass. 508, 520, 467 N.E.2d 126, 130 (balancing of employee's privacy interest, confidentiality of physician-patient relationship and legitimacy of employer's interest in disclosing the information determines whether disclosure is actionable). See *Folmsbee*, 417 Mass. at 394-95, 630 N.E.2d at 589-99 (same standard used to uphold mandatory drug-testing policy for employees of tool manufacturer). See *infra* Section I.A.8. Thus, no medical information in an employee's file should be disclosed to any other individual absent the written consent of the employee, unless disclosure by the institution is necessary to (1) discern whether aspects of an employee's health affect the employee's ability to perform job duties effectively or properly; (2) ensure the health or safety of the employee; or (3) serve a compelling governmental or other public interest. See *Bratt*, 392 Mass. at 520, 467 N.E.2d at 130 and cases cited. Should an institution contemplate disclosure without the consent of the employee in the latter instance and disclosure is not immediately necessary to ensure the health or safety of employee(s) or student(s), the institution should consider seeking a declaratory ruling from the Superior Court on the issue prior to disclosure.

b. Patient-Employee's Privilege: Records of Psychotherapy

Where a privilege is claimed by an employee-patient, medical records made by a psychiatrist, psychologist or specially trained psychiatric nurse and containing confidential communications made relative to diagnosis or treatment of an employee's mental or emotional condition may not be disclosed, in a pretrial, trial, administrative, or legislative proceeding. Mass. Gen. L. ch. 233, § 20B (certain limited exceptions apply in specified circumstances); see *supra* Section A.11. Accordingly, all such records retained by the institution should be marked as Privileged and Confidential, placed in a secured area, and not disclosed absent written consent of the employee, or unless disclosure is otherwise permitted under the statute.

Retention. No retention period is prescribed for employee medical records. Compliance with OSHA requirements is recommended.

7. **Faculty Peer Review Materials**

There are no specific state requirements regarding retention or disclosure of faculty peer review materials (*but see infra* Section 8).

8. **Personnel Records**

The Commonwealth's personnel records act, Mass. Gen. L. ch. 149, § 52C, applies to all employees except the tenured and tenure-track faculty at private institutions. *Id.* The Act defines "personnel records" as any identifying record which is used in connection with, or may affect, any

employment decision, such as promotion or discipline decisions. *Id.* At a minimum, employers with twenty or more employees must keep personnel records containing the following information regarding an employee: name, address, date of birth, job title, and job description; rate of pay and other compensation; starting date; job application; resumes or other forms of employment inquiries; performance evaluations, including disciplinary records; lists of probationary periods; any waivers signed by the employee; copies of dated termination notices; and any other documents related to disciplinary proceedings. *Id.* Personnel records *do not include* any information of a personal nature about any person other than the employee, the disclosure of which would be a clear violation of that person's privacy. *Id.* Personnel records must be kept in typewritten or printed form or may be handwritten in indelible ink. *Id.*

Upon an employee's written request, an employer must provide the employee with the opportunity to review and obtain a copy of his or her personnel record. *Id.* If there is a disagreement about the contents of the personnel records, the employer may agree to remove or correct the disputed information, or give the employee the opportunity to insert a written statement into the record, which will become a permanent part of the record. *Id.*

Retention. An employer of twenty or more employees must retain the complete personnel record of an employee, without deletions or expungement, from the date of hire until *three years* after the employee's termination. *Id.* If an employee brings a cause of action against the employer, such as a proceeding before the MCAD or the Department of Labor and Industries, or a lawsuit, the employer must keep that employee's personnel record until final disposition of the action. *Id.*

Finally, if an employer of twenty or more employees promulgates a written personnel policy, then a copy of this policy must be continuously maintained at the employer's personnel office. *Id.*

Employee's Age Records. Massachusetts law requires employers to keep records of the ages of their employees, but does not specify for how long. Mass. Gen. L. ch. 149, § 24D. These records must be kept separate from other personnel files. Mass. Regs. Code tit. 804, § 3.01(6).

9. Tax Records

a. **Report of Wages Paid.** As an employer that is required to deduct and withhold taxes on its employees' wages, an institution must submit to the Commissioner of Revenue quarterly a report of the names, social security numbers and wages paid to each employee as well as any identification number that the employer is required to include on a withholding tax return. Mass. Gen. L. ch. 62E, § 2; *see* Mass. Gen. L. ch. 62B, § 4.

b. **New Employees.** In addition to the above, an institution must report the hiring of any new employee to the Commissioner as follows: On or before the start date, the employee must complete a Form W-4, "Employee's Withholding Allowance Certificate," as required by both state and federal law. Mass. Gen. L. ch. 62B, § 4. *See* 26 U.S.C. § 3402(f)(2)(A). Within fourteen days of the employee's start date, the employer must submit a copy of this form to the

Commissioner. Mass. Regs. Code tit. 830, § 62E2.1(3); *see* Mass. Gen. L. ch. 62E, § 2. Upon an employee's reinstatement to work after a lapse in pay, a new Form W-4 or a copy of the form completed by the employee as of his/her original start date must be submitted within fourteen days of the effective date of reinstatement. *Id.* at Mass. Regs. Code tit. 830, § 2.1(5); *see also id.* at § 62E.2d(6) (alternative means of reporting permissible, *e.g.*, by magnetic tape, or by a list of employees containing all necessary information; other requested means of transmitting information to be considered).

Retention. There are no prescribed retention requirements for state tax records. Adherence to the federal requirements is recommended.

10. *Employee Benefit Plans*

There are no record-keeping or retention requirements. Adherence to the federal retention requirements is recommended.

11. *Polygraph Records*

Massachusetts law currently prohibits employers from subjecting employees or job applicants to polygraphs or any other tests which purport to measure truthfulness. Mass. Gen. L. ch. 149, § 19B.

12. *Workers' Compensation*

a. *Notice of Injury*

Pursuant to Mass. Gen. L. ch. 152, § 6, an institution must provide notice, on a form prescribed by the Division of Industrial Accidents ("DIA"), of any injury "alleged to have arisen out of and in the course of employment" which incapacitates an employee for at least five days. *Id.* The notice must contain the name and nature of business of the employer; name, age, sex and occupation of the injured employee; and the date, nature, cause and circumstances of the injury. *Id.* Additional reports may be required from the employer concerning the injury and condition of the employee, including medical and rehabilitation reports. *Id.*

b. *Notice of Provision of and Cessation of Insurance*

The institution must give written notice to every prospective employee with whom it plans to enter into a contract of employment that it has provided for payment to injured employees by an insurer or by means of self-insurance. Mass. Gen. L. ch. 152, § 22. *See id.* at § 25A(2). The institution also must give written notice to all persons under a contract of employment of the cessation of insurance on or before the day on which the policy expires if no renewal occurs. *Id.* at § 22. A copy of this notice must be filed with the DIA. *Id.*

Retention. No specific retention period is required. It is recommended that records relating to injuries of employees that occur during employment should be retained for *five years* from the date that the employee is aware that the injury may be related to his employment or, in the case of the death of the employee, for *five years* after death. See Mass. Gen. L. ch. 152, § 41 (four-year period of limitations applies to bringing a workers' compensation action; statute commences on date that employee "first [is] aware of causal relationship" between disability and employment, or, in case of death of employee, within four years of death). If an action is commenced pursuant to Mass. Gen. L. ch. 152, or an appeal is taken from an order of the DIA, such records should be retained until termination of the action.

13. *Unemployment Compensation*

Employers must keep true and accurate records of all employees in order to be able to provide whatever reports may be requested by the Commissioner of the Division of Employment and Training. 430 Mass. Regs. Code tit. 430, § 5.01. When an employer is required to submit a report to the commissioner, all documents used in preparation of that report must be kept for *four years*. *Id.* Otherwise, no retention period is mandated; however, the four year requirement should be used as guidance for all such records.⁵⁵

There are also several reporting requirements associated with unemployment compensation that are too lengthy to be treated in-depth here. See Mass. Regs. Code tit. 430, § 5.02. However, examples of the kinds of events that trigger a reporting requirement include the following: the employer has paid more than \$1500 in wages or employed more than one individual on some day in each of thirteen weeks in any calendar year; the employer has either acquired, transferred, or sold a business; or the employer pays more than \$1000 in cash for domestic service in any quarter in the calendar year, which includes services for the maintenance or operation of a college club, fraternity, or sorority. See *id.* at § 5.02(2)(a), (c), (e). Employers also must give notice at least forty-eight hours before an anticipated mass separation of employees, and within forty-eight hours after a strike.⁵⁶

⁵⁵ Note that this is a longer period than that required under the law governing retention of payroll records generally. See *supra* Appendix A, Section II.B.1.

⁵⁶ See Mass. Regs. Code tit. 430, § 5.02(6).

C. **MASSACHUSETTS REPORTING REQUIREMENTS FOR INDEPENDENT COLLEGES INCORPORATED AS NONPROFIT CORPORATIONS OR "PUBLIC CHARITIES"**⁵⁷

1. *Reporting Requirements Pursuant to Mass. Gen. L. ch. 180*

a. Articles of Organization

To establish a legal corporate entity, an institution must file articles of organization with the Office of the Secretary of State. Mass. Gen. L. ch. 180, § 3; Mass. Gen. L. ch. 156B, §§ 12, 13. The Articles must state, at a minimum, the name of the corporation and the purposes for which the corporation is formed. See Mass. Gen. L. ch. 180, § 3. The Articles must omit any reference to stock and stockholders. *Id.* In addition, the incorporators must file a certification that neither they nor the officers of the corporation have been convicted of any crimes "relating to alcohol or gaming within the past ten years." *Id.* at §106.06. See Mass. Gen. L. ch. 180, § 27 (conviction of illegal gaming activities or illegal sale of alcoholic beverages results in voiding charter of nonprofit corporation).

b. Amendments to Articles of Incorporation

All amendments to the corporation's articles of organization must be signed under the penalties of perjury by the President or Vice President and by the Clerk or Assistant Clerk, and filed with the Secretary of State. Mass. Gen. L. ch. 156B, § 72; Mass. Gen. L. ch. 180, § 7. See also Mass. Gen. L. ch. 180, § 6D (institution "may" file certificate of change in the board and current financial and recording officials); Mass. Gen. L. ch. 156B, § 74 (same procedure for filing required for restated articles of organization).

c. Consolidation and Merger: Filing of Articles Required

Two or more corporations, including any combination of either nonprofit and "for profit" corporations may consolidate to form a new corporation or may merge into a single corporation. Mass. Gen. L. ch. 180, § 10 (incorporating requirements of Mass. Gen. L. ch. 156B, § 78). If one of the constituent corporations is nonprofit, the consolidated, or surviving corporation, also will be nonprofit. *Id.* The institution, or the other corporation that seeks to consolidate or merge with the

⁵⁷ Independent institutions in Massachusetts may be organized as either nonprofit corporations, pursuant to Mass. Gen. L. ch. 180, § 4, which expressly permits formation of a corporate entity for any "educational" purpose, or as a "for profit" corporation that maintains capital stock, pursuant to Mass. Gen. L. ch. 156B. Since virtually all educational institutions incorporate as non-profit corporations, this survey does not undertake the subject of separate record-keeping required only for profit-making corporations.

institution, must execute "an agreement of consolidation or merger" ("the Agreement"). See Mass. Gen. L. ch. 156B, §78 (detailing requirements of agreement).

The corporation must file with the Secretary of State the Articles of Consolidation or Merger, which must contain the following:

- the names of the constituent corporations and the resulting corporation;
- the effective date of the consolidation/merger in accordance with the agreement; and,
- any amendment to the articles of organization of the resulting corporation to be effected pursuant to the agreement. Mass. Gen. L. ch. 180, § 10(d)(1);⁵⁸ Mass. Gen. L. ch. 156B, § 78.

d. Certificate of Correction

If a document that is filed with the Secretary of State is "inaccurate" or was "defectively or erroneously executed," the filing may be corrected by the filing of a certificate of correction, which shall specify the inaccuracy or defect and set forth that portion of the document in corrected form. Mass. Gen. L. ch. 180, § 3A.

e. Certificate of Change in Officers/Directors - Penalty for Failure to File

An institution must file promptly with the Secretary of State a certificate evidencing any change in the directors, president, treasurer or clerk of the corporate entity, which must be signed under the penalties of perjury by the clerk or assistant clerk. See Mass. Gen. L. ch. 156B, § 53. Failure to file the certificate within thirty days following the change will result in a "forfeiture of not more than five hundred dollars. . . ." *Id.*; see *id.* at § 113 (providing for action by Attorney General on behalf of Secretary of State to recover monetary penalties).

Retention. There are no specific retention requirements for records required to be filed with the Secretary of State. However, since such records establish the legal existence of the corporation

⁵⁸ The resulting corporation must also file either a copy of the articles of consolidation or merger certified by the Secretary of State or a certificate evidencing the filing of the same, see Mass. Gen. L. ch. 156B, § 84, in the registry of deeds in each district in the Commonwealth in which real property of any constituent corporation is situated, where the constituent is not the surviving corporation of a merger. See Mass. Gen. L. ch. 180, § 10(d)(2); see also Mass. Gen. L. ch. 156B, § 79; Mass. Gen. L. ch. 180, § 10A (specific reporting requirements for consolidation or merger of domestic and foreign corporation).

and the parameters of its legal ability to conduct nonprofit activities and operations, they should be retained indefinitely.

2. **Required Reporting and Record-Keeping Pursuant to Mass. Gen. L. ch. 12, §§ 8-8m**

a. **Filing of Information with Attorney General**

Prior to engaging in its work or raising funds in the Commonwealth, an institution must register with the Department of the Attorney General, Division of Public Charities ("the Division"), which has the statutory authority to oversee the conduct of nonprofit corporations (referred to in this statute as "public charities") operating in Massachusetts. Mass. Gen. L. ch. 12, §§ 8-8M. An institution must file a copy of its Articles of Organization, Charter, Agreement of Association, or Instrument of Trust and a true copy of its Constitution and By-Laws. Amendments to the above documents also must be filed within thirty days after their adoption. *Id.* at § 8E.

b. **Annual Reports - Form PC**

Each institution that is incorporated as a "public charity" in Massachusetts must file annually a report for the preceding fiscal year with the Division. Mass. Gen. L. ch. 12, § 8F; Mass. Regs. Code tit. 940, §§ 2.00.⁵⁹ A complete audited financial statement must accompany the report. Mass. Gen. L. ch. 12, § 8F.⁶⁰ The "Form PC" is the annual report form prescribed by the Division.

Any institution that fails to file an annual report will be assessed a civil penalty of \$500. *Id.* Any willful making of a material representation in an annual report can result in a fine of up to \$5,000 and/or imprisonment for up to one year. *Id.*

c. **Annual Registration Statement**

As "charitable organizations," as defined by Mass. Gen. L. ch. 68, § 19, and because they solicit funds within Massachusetts for their own benefit, institutions in the Commonwealth must file annual registration statements with the Division. *Id.* The annual statement, which must be sworn to, must contain the form of the organization, its tax exempt status for federal income tax purposes, the charitable purpose(s) for which the contributions to be solicited shall be used, and the names of the individuals (officers) with final responsibility for the custody of and distribution of the

⁵⁹ A public charity that receives less than \$100,000 in gross support and revenue during the preceding fiscal year is exempt from this requirement. Mass. Gen. L. ch. 12, § 8F.

⁶⁰ A public charity that receives not more than \$250,000 during the preceding fiscal year need only file a financial statement accompanied by an independent review report by a Certified Public Accountant. *Id.*

contributions. *See id.* In addition, the statement must be accompanied by the annual report (Form PC) for the organization's immediate preceding fiscal year. *Id.* The registration forms and any other documents prescribed by the Division shall be signed by any two officers of the organization, including the chief fiscal officer, and must be verified under oath. *Id.* A Certificate of Registration shall be issued to the institution within ten days of receipt of a properly completed registration statement. *Id.* The institution may not engage in fund raising without a valid Certificate of Registration.

d. Contracts

Prior to engaging in any solicitation pursuant to a contract with a professional fundraising consultant, solicitor, or "commercial co-venturer,"⁶¹ the institution must file a copy of the contract with the Division within ten days of the date into which the contract was entered. Mass. Gen. L. ch. 68, § 22. The contract must contain a statement of the charitable purposes to be described in the solicitation and a statement of the guaranteed minimum percentage of the gross receipts from fundraising to be used exclusively for those charitable purposes. *Id.*

e. Fiscal Records Pursuant to Mass. Gen. L. ch. 68, §§ 18-35

The institution must also maintain "true fiscal records" concerning fundraising activities that are encompassed by Mass. Gen. L. ch. 68, §§ 18-35 in a form that will enable an accurate reporting of such information. Mass. Gen. L. ch. 68, § 26. Upon demand, such records shall be made available to the Division for inspection. *Id.*

f. Fiscal Records Pursuant to Mass. Gen. L. ch. 12, § 82

Every institution must keep fiscal records of its activities within Massachusetts "in such form as will enable it accurately to provide the information required" in the Annual Report. Mass. Gen. L. ch. 12, § 8L. Such fiscal records are further described to include "permanent books of account and records including records of inventories, as are sufficient to substantiate each item of the financial and non-financial information required in the annual report." Mass. Regs. Code tit. 940, § 2.03(1). More specifically, the fiscal records must:

- support each transaction for the recording of items of gross support, revenue, and expenses;

⁶¹ A commercial co-venturer is any person who, for a profit, promotes or sponsors an event or sale to the public of a good or service advertised as benefitting any charitable purpose or advertised in conjunction with the name of the charitable organization. Mass. Gen. L. ch. 68, § 18.

- provide a breakdown of expenses so as to distinguish "fund raising from all other expenses;" and,
- disclose the sources of revenue and expenses relating to special events and the specific items of revenue and expenses from special events.

Id. at §§ 2.03(3) - 2.03(5).⁶²

g. *Sale/Lease/Other Disposition of all/Substantially all of Institutional Property: Notice to Attorney General*

An institution must give written notice to the Division at least thirty days before the sale, lease or other disposition of "all or substantially all of its property and assets" if the sale, lease or other disposition will cause "a material change in the nature of the activities conducted by the corporation . . ." Mass. Gen. L. ch. 180, § 8A(c). No such notice is required if a written waiver of notice is executed by the Attorney General before or after the disposition.

Retention. All fiscal records must be retained for at least **three years** after the end of the period to which an annual report relates, Mass. Gen. L. ch. 12, § 8L, or after the end of the period of the annual registration statement to which they relate. Mass. Gen. L. ch. 68, § 26. There are no other prescribed retention periods. However, since the required filings with the Division confirm that the institution is continuing its nonprofit operations legally, it is recommended that all such records be retained indefinitely.

3. *Federal Income Tax Exemption - Retention of Form 990*

In order to maintain its exemption from federal income tax, an institution, as a nonprofit entity, must file the federal Form 990 on an annual basis. *See* 26 U.S.C. § 6033. The form, which must be filed within four and one-half months after the end of the fiscal year, reports the gross income, expenses and disbursements of the institution, the total of contributions and gifts received, the names and addresses of all "substantial contributors," the names and addresses of "highly compensated employees," and the compensation paid to each such individual. *Id.* at § 6033(b).

The Form 990 must be available to the public, in person or by written request, at the main campus of the institution and at any other campus having at least three employees for a period of **three years** from the filing date. 26 U.S.C. § 6104. *See id.* at § 6104(e)(1)(D) ("filing date" is last day prescribed for filing return pursuant to Section 6033); *see also* 26 U.S.C. 6104(e)(2)(A) (copies of the Form 1023, Application Seeking Tax Exempt Status pursuant to 26 U.S.C. § 501, as well as

⁶² All information required to be filed with the Division shall be treated as a "public record" and available for inspection by the public in the office of the Division. Mass. Gen. L. ch. 12, § 8M; Mass. Gen. L. ch. 68, § 25.

any document issued by the IRS with respect to such application also to be available for public inspection at main and branch campuses). This requirement does not apply to the Form 990T. The names and addresses of contributors to the institution are not disclosable despite their inclusion on the Form 990. 26 U.S.C. §§ 6104(e)(1)(C), 6104(e)(2)(B).

4. *Trustees Conflict of Interest Certifications*

There are no specific regulations prescribed by Massachusetts law regarding trustee conflict of interest certifications concerning stockholdings and other interests. It is recommended that such records be maintained until *three years* after the trustee has resigned from the Board.

D. LICENSURE OF INDEPENDENT COLLEGES IN MASSACHUSETTS

The Higher Education Coordinating Council (the "Council") is responsible for the regulation of certain higher education institutions chartered after 1943.

The Council must approve the proposed incorporation of any "college, junior college, university or other educational institution with the power to grant degrees," and approve any amendment to the charter of an existing institution which will grant it such authority. Mass. Gen. L. ch. 69, §§ 30, 30A, 31, 31A.

The Council must investigate the purposes of the proposed educational institution and "all material facts" relating to it. *Id.* at § 30. In this regard, the Council has broad authority to collect from independent institutions "such data. . . as may be relevant to the careful and responsible discharge of its purposes, functions and duties. . . ." Mass. Gen. L. ch. 15A, § 9. *See* Mass. Gen. L. ch. 69, § 30A (Council may establish and apply to institution seeking degree-granting authority standards concerning the faculty, courses of study, financial organization, facilities, physical plant, equipment, and leadership). Mass. Gen. L. ch. 69, § 30A; Mass. Gen. L. ch. 15A, § 9(h) (Council may require institutions to submit admissions and program standards, which shall be subject to Council approval).

a. *Proposed Institution Seeking Original Authorization and Approval*

When a new institution is proposed and original approval to operate is sought, the petitioner must provide the following information:

- the petition and proposed certificate of organization or the articles of amendment;
- the constitution and by-laws; and

- proof of assets and existing financial support.

See Mass. Regs. Code tit. 610, §§ 2.22(2)(a), 2.22(2)(b).

b. Degree-Granting Authority - Record-Keeping Requirements

The Council has promulgated regulations containing uniform standards and procedures to apply to any institution that seeks to conduct credit-bearing courses or to grant degrees within the Commonwealth. Mass. Regs. Code tit. 610, §§ 201 - 2.32. Specific records are required to be kept for independent institutions in Massachusetts seeking to acquire or maintain this "degree-granting authority" or "accreditation" by the Council. See Mass. Regs. Code tit. 610, §§ 2.18(2).

(1) Faculty. "Appropriate records" must be maintained on each faculty member. *Id.* at § 2.18(2)(c). Although not specified, the subject matter of such faculty records must enable the Council to determine that faculty retain qualifications "suited to the field and the level of their instructional assignments." *Id.*

(2) Financial Records. To show evidence of "past, present and future financial stability," the institution must maintain "[f]iscal records" that will permit "immediate analysis of the fiscal status of the institution." Mass. Regs. Code tit. 610, § 2.18(2)(d). All annual financial statements also must be audited annually and certified by an independent certified public accountant authorized to practice in the Commonwealth. *Id.* at § 2.18(2)(d).

(3) Records Concerning Administrative Personnel. The regulation requires only that the institution maintain "appropriate records" on each member of the administration. *Id.* at § 2.18(2)(e). At a minimum, it would appear that such records should confirm that the individual members of the administrative staff are qualified to fulfill the duties required of their respective positions.

(4) Publication of Policies Concerning Students. The institution must publish policies on the following:

- admissions, including the entrance standards, procedures and affirmative action policy;
- awarding financial aid;
- tuition and fees;
- health care services for students;
- academic standards and regulations (including degree requirements);

- disciplinary procedures and behavioral expectations; and
- academic and personal counseling for students.

Id. at § 2.18(2)(f)(3).

(5) *Student Records*. Required to be kept by the institution, such records must include, but may not be limited to the following:

- date of admission;
- period of attendance;
- academic work undertaken;
- academic work successfully completed;
- honors awarded;
- diploma, degree, or certificate earned; and
- appropriate evaluation of the quality of work completed.

Id. at § 218(2)(f)(5).⁶³

(6) *Articles of Amendment Filed with Secretary of State*. Existing institutions that have already been incorporated under Mass. Gen. L. ch. 180, and which desire to amend their charter to acquire or to alter their degree-granting authority, or to obtain a change of the name of a college, junior college, or university, must file articles of amendment with the Secretary of State. The articles of amendment are referred to the Council for review and determination. Mass. Regs. Code tit. 610, § 2.28. *See* Mass. Gen. L. ch. 180, § 7; Mass. Gen. L. ch. 156B, § 72 (procedure for filing articles of amendment with Secretary of State). *See also* Mass. Regs. Code tit. 610, § 2.22(c) (detailing supplemental information that may be required before amendment approved).

⁶³ In addition, the institution must keep comprehensive, accurate, and up-to-date catalogs and/or bulletins, which detail the accreditation received, admissions procedures and criteria, physical and financial resources, financial policies for the student, course offerings, and descriptions of students' rights and responsibilities. Mass. Gen. L. ch. 610, § 2.18(2)(g).

Retention. There are no retention requirements for records submitted for licensure or for obtaining or maintaining degree-granting authority. It is recommended that such records be retained *indefinitely*.

E. ACCREDITATION

Massachusetts law does not regulate the process by which an institution may be accredited by an independent educational or professional organization.

Retention. Although there are no specific retention requirements prescribed by federal or Massachusetts law, the importance of reports and other documents generated as a result of the accreditation process dictate that such records be retained *indefinitely*.

F. FINANCIAL AID RECORDS

a. General Scholarship Program

This program is administered by the Council to provide financial aid to students domiciled in Massachusetts and enrolled in any state or independent institution. Mass. Gen. L. ch. 15A, § 16. *See also* Mass. Gen. L. ch. 15A, § 9(j) (Council receives federal grants for scholarship aid to state colleges.)

(1) Annual Report. The Council must file with the General Court an annual report of the current year general scholarship program expenditures and, for the following year, projections of general scholarship expenditures and appropriations requests required to fully subsidize financial need. Mass. Gen. L. ch. 15A, § 16. Implicitly, to enable the Council to file an accurate report and request for appropriations, institutions that participate in the scholarship program also should provide annually to the Council information on Commonwealth scholarship monies received and expended during the current year, as well as a request for an amount of aid necessary to fund students' financial needs for the following year. *See id.*

b. Matching Grant Program

Under the matching grant program, the Council matches its scholarships with those provided by Massachusetts independent colleges. *Id.*

(1) Audit Procedures. The matching grant program includes an audit procedure designed to determine that such institutions are in compliance with the Council's regulations that govern this program. *Id.* To be eligible to participate in the program, the institution must agree to spend the entire amount of the grant awarded for "direct financial assistance" to

eligible Massachusetts students and to comply with "information requests" from the Council in accordance with Mass. Gen. L. ch. 15A. *Id.*

(2) Annual "Participating Agreement." Any institution that participates in any of the scholarship programs annually must execute a "participating agreement" for such program and file the contract with the Council's scholarship office. Mass. Gen. L. ch. 15A, § 16.

(3) Students' Academic Standing. Any institution that participates in any of the scholarship programs must retain records of the recipient student's academic performance and provide requested documentation to the Council in accordance with its guidelines to confirm that the student has maintained "satisfactory academic progress," thus entitling him/her to continue to receive scholarship monies. *Id.*

Retention. It is recommended that the institution keep the above records for each year in which it has been granted an award or matching grant for *five years* after the award year has ended. Any records concerning a claim or expenditure questioned under an audit must be retained until resolution of any questions.

G. GRANTS AND LOANS

The Massachusetts Educational Financing Authority ("Authority") is a quasi-public instrumentality, a primary purpose of which is to assist borrowers and institutions in financing and refinancing the costs of education by making direct education loans. Mass. Gen. L. ch. 15C, § 5.

1. *Massachusetts Educational Financing Authority Loans to Colleges - Inspection of Records of Participating Colleges*

a. Records Showing Compliance with Loan Agreements

The Authority may inspect "records and financial reports" of any participating institution to confirm its compliance with the terms of the loans. Mass. Gen. L. ch. 15C, § 5(p). In accordance with § 5, the institution must require that each borrower of an education loan certify in writing that it will use the proceeds only for educational purposes.

Retention. There are no specific retention requirements for student financial aid records under Massachusetts law. Adherence to the federal requirements for loan and grant records is recommended. For financial records that are not covered in one of the federal categories of loan or grant records, it is recommended that the record be kept for *one year* following the date of confirmation of discharge of the loan or fulfillment of the grant to which the record relates.

H. LAW ENFORCEMENT RECORDS

a. Uniform Crime Reports

The Massachusetts statute governing Uniform Crime reports was, by its terms, rendered null and void by the enactment of 20 U.S.C. § 1092. *See* 1992 Mass. Acts 286, § 67.

b. Criminal Offender Record Information

Massachusetts law strictly limits the public's access to "criminal offender record information" ("CORI"), encompassing any records kept by a criminal justice agency, including campus law enforcement officials, which concern an identifiable individual and relate to arrests, charges, judicial proceedings, or other actions. Mass. Gen. L. ch. 6, §§ 167-178. CORI records may only be disclosed to other criminal justice agencies and to agencies or individuals who have been authorized by the state's Criminal History Systems Board,⁶⁴ and law enforcement authorities must keep a list of all the agencies and individuals to whom they provide CORI records. *Id.* at § 172.

Every individual has the right to review and copy CORI records regarding him or her. *Id.* at § 175. If the individual believes that the information in the records is inaccurate, he or she may request that they be changed, and, if a dispute arises, he or she may petition the Criminal History Systems Board for review. *Id.* In addition, an individual may authorize third parties to review his or her CORI records. Mass. Regs. Code tit. 803, § 6.06.

c. Hazing: Reporting Requirements

"Hazing," a crime in Massachusetts, is defined as "any conduct or method of initiation" into a student organization, which "willfully or recklessly endangers the physical or mental health of any student or other person." Mass. Gen. L. ch. 269, § 17. Conduct incorporated into the definition, without limitation, includes "whipping, beating . . . forced calisthenics, . . . forced consumption of any food, liquor, beverage, drug or other substance, or any other brutal treatment or forced physical activity which is likely to adversely affect the physical health or safety of any such student" *Id.* A person at the scene of a "hazing" incident must report the crime to a law enforcement official as soon as reasonably practicable. *Id.* at § 18.

Every institution must issue to each student group, team, or organization, or a known but unaffiliated student group a copy of Mass. Gen. L. ch. 269, §§ 17, 18; Mass. Gen. L. Ch. 269, § 19.⁶⁵

⁶⁴ For example, state social workers may obtain CORI records in connection with evaluating prospective foster or adoptive parents. Mass. Regs. Code tit. 803, § 4.00.

⁶⁵ In addition, a copy of Mass. Gen. L. ch. 269, §§ 17-19 must be delivered annually, prior to or at the start of enrollment, to each full-time student enrolled at the institution. Mass. Gen. L. ch.

Each organization or group receiving a copy of the statute must deliver annually to the institution an "attested acknowledgment" stating that the group received a copy of the statute, that each of its members or applicants for membership received a copy, and that the group intends to comply with the statute. *Id.*

(1) Annual Report to be Filed with Higher Education Coordinating Council. Every institution must file with the Council annually a report certifying that such institution has complied with its responsibility to inform student groups and each full-time student of the statute. *Id.* at § 19. The regulations promulgated by the Council require that such annual reports show that the institution has:

- informed all student groups, teams or organizations of the anti-hazing law;
- notified every full-time student enrolled by the institution of the anti-hazing law; and
- adopted a disciplinary policy concerning the participants and organizers of hazing, and that such policy has been set forth with "appropriate emphasis" in the student handbook or communicated to the students by similar means.

Mass. Regs. Code tit. 610, § 5.04. The report must be signed by the President or Chief Executive Officer of the institution. The report must be filed annually on or before July 31 of each year, and cover the period comprising July 1 - June 30 of the preceding year. *Id.* at § 5.04(3). Any institution that fails to submit the report is deemed in "non-compliance" with the statute, and the Council shall report to the Attorney General the identity of any institution that fails to submit such report. *Id.* at § 5.05.

Retention. There are no specific retention requirements under Massachusetts law. A *seven-year* retention period is recommended.

I. NON-DISCRIMINATION IN EDUCATION RECORDS AND REPORTS

The Massachusetts Fair Educational Practices Act, Mass. Gen. L. ch. 151C §§ 1 - 5, prohibits an institution from excluding or otherwise discriminating against prospective students seeking admission because of "race, religion, creed, color or national origin." Mass. Gen. L. ch. 151c, § 2.⁶⁶

269, § 19.

⁶⁶ As in the Fair Employment Practices Act, Mass. Gen. L. ch. 151B, § 1, and Mass. Gen. L. ch. 151C exempts from the broad definition of an "educational institution" a "religious or denominational educational institution" which may limit or give preference in admission to members of its own religion. Mass. Gen. L. ch. 151C, § 1. See Mass. Regs. Code tit. 804, § 4.01

Furthermore, an institution may not exclude, limit or otherwise discriminate against any person seeking admission to a program leading to a degree beyond a Bachelor's degree based on "race, religion, creed, color, age, sex, or national origin." *Id.*

a. Limitation on Maintaining Record of Protected Characteristics

An institution is prohibited from making any written (or oral) inquiry concerning the "race, religion, color or national origin" of a person seeking admission except for "affirmative action purposes." *Id.* at § 2(c); 804 C.M.R. § 4.01(5)(b). See Mass. Gen. L. ch. 151C, § 2A (same requirement applies to vocational institution); but see 1968 Op. Att'y Gen. 155 (state university may require information from students as to their race and national origin solely to meet informational requirements of federal government). The institution may only keep records referring to the race, religion, creed, color, or national origin of the person securing admission "for the purpose of implementing affirmative action programs" and only if approved by the MCAD. Mass. Regs. Code tit. 804, § 4.01 (5)(c). Any such permissible inquiry must be made "on a form separate from the application for admission and [must state thereon] that the inquiries are for affirmative action purposes." Mass. Regs. Code tit. 804, § 4.01 (5)(b). Such forms are to be returned to the institution "separate from the application for admission forms and [are to be] retained in files "separate and apart from the applications for admissions." *Id.* (emphasis added.)

Similarly, the institution may not request, or make or keep a record of, or use any form or application blank which requests information regarding the following:

- an arrest or other disposition which did not result in a conviction or in which a conviction was vacated;
- a first conviction for certain misdemeanors (e.g., speeding, simple assault, drunkenness); or
- conviction of a misdemeanor which occurred more than five years prior to the date of application for admission, unless the applicant was sentenced to imprisonment upon such conviction or was convicted of any offense within that period. Mass. Gen. L. ch. 151C, § 2(f).

In addition, each institution must submit to the MCAD the most recent copy of its catalog, application, and a statement of admissions procedures and keep same up-to-date. *Id.* at §§ 4.01(4)(a).

(same exception stated). See also Mass. Gen. L. ch. 151C, § 1 (institutions which are "distinctly private" in nature, are not covered by the statute); Mass. Regs. Code tit. 804, § 4.01(2)(b) (same). However, such religious institutions must still adhere to the provisions of Mass. Gen. L. ch. 151C concerning color, race, and national origin. See Mass. Regs. Code tit. 804, § 4.01(2).

(1) *Affirmative Action Program Required.* Upon request by the MCAD, an institution must submit an Affirmation Action Program for approval to that agency. Mass. Regs. Code tit. 804, § 4.02(2). The AAP must address not only admission of students and "teacher training," but also "purchasing, construction, recruiting, and hiring" of nonprofessionals and professionals. *Id.*

Retention. All records of all applicants for admission, whether accepted or rejected, must be maintained by the institution for **three years** after the date of application. Mass. Regs. Code tit. 804, § 4.01(4)(b). Since there is no prescribed retention period for AAPs, it is recommended that such records also be retained for **three years** from the date that the AAP is updated or superseded except that all records, including an AAP, that relate to a pending action before the MCAD also must be maintained until termination of the action. *See id.* at § 4.01(4). *See also* Mass. Gen. L. ch. 151C, § 3 (six-month statute of limitations on filing petition claiming violation of Fair Educational Practices Act).

J. MISCELLANEOUS RECORDS

1. *Trusts/Bequests*

Other than tax records required by the Internal Revenue Service and the Department of Revenue, there are no specific record-keeping or retention requirements under federal or Massachusetts law for property held in trust for the benefit of an institution or bequests of money to the institution. Because there is no statute of limitations on actions to terminate a trust or by a legatee to recover personal property under a will, all records relating to trusts and bequests under wills should be retained *indefinitely*.

2. *Real Property*

Aside from the tax law, neither federal nor Massachusetts law requires any specific record-keeping or retention of records concerning interests in real property retained by an institution. Massachusetts has a **twenty-year** statute of limitations for an action to recover real property. Mass. Gen. L. ch. 260, § 21. In addition, an action to compel removal or alteration of a structure based on violation of state or local zoning laws must be commenced within ten years after commencement of the alleged violation. Mass. Gen. L. ch. 40A, § 7. It is recommended that copies of records evidencing such interests be retained *indefinitely* and in a segregated file.

3. *Voting Lists - Annual Report Required by Institutions that Maintain Lodging for Students*

Registrars of voters in the cities and towns of the Commonwealth must formulate "true lists" of all residents of their municipality three years of age or older for the purpose of establishing valid lists showing one's eligibility to vote. *See* Mass. Gen. L. ch. 51, § 4 (In Boston, the "true list"

contains names of persons seventeen years of age and older.) Pursuant to Mass. Gen. L. ch. 51, § 10A, every institution that maintains "dormitories or fraternity houses" must file annually, with the Registrar of Voters in the city or town where the institution is situated, a record of the names and dates of birth of every person older than three residing in such lodging as of January 1 of that year. *Id.*

Retention. No retention requirement is included in the statute. A *one-year* retention period for an outdated list is recommended.

4. *Register of Nonresident Students who Maintain Motor Vehicles Registered out of State*

Every institution must compile and maintain a register of all nonresident students who maintain and operate a motor vehicle that is registered in another state or foreign country. Mass. Gen. L. ch. 90, § 3. The register must contain the following relevant information:

- the identifying numbers of the decal as prescribed and issued by the Registrar (and ultimately issued by the institution) to the student, which must be affixed to the student's windshield;
- the name and address of the owner of the motor vehicle;
- the residential address of the student while attending school;
- the residential address of the student (if any) outside Massachusetts;
- the registration number, make, and type of the motor vehicle;
- the state, province, or country of registration; and
- the names and addresses of all insurers providing liability insurance coverage for operation of the motor vehicle.

The register must be available for inspection by the Registrar's agents and police officers. *Id.*

The above information should be obtainable from the records of the city or town police department where the institution is located, since each nonresident student, as described above, must file a form with the local police department setting forth this information, and the police department must submit a copy of the completed form to the institution. *Id.*

Failure of an institution to compile or maintain a register of the above information will subject the institution to a fine of one hundred dollars for each offense. *Id.* Thus, institutions should

maintain a record of all students who maintain an out-of-state vehicle and notify all students at the beginning of each academic session of the requirement of registering out-of-state vehicles with the local police department.

Retention. There is no retention requirement in the statute. A *four-year* period of retention for an outdated register is recommended. See Mass. Gen. L. ch. 260, § 2A (*three-year* statute of limitations for tort actions involving personal injuries).

5. *Drug-Free Schools and Community Act*

- a. "Student Right-to-Know," "Crime Awareness," and "Campus Security" Acts -- see information on p. 30.

6. *College Infirmaries*

- a. Updating Licensure Information

All information required to be filed with the Massachusetts Department of Public Health ("the Department") in order to obtain original licensure of the institutional infirmary as a "hospital" pursuant to Mass. Gen. L. ch. 111, §§ 51, 71 and Mass. Regs. Code tit. 105, § 130.020 must be kept current. Mass. Regs. Code tit. 105, § 130.105. The institution must report changes in the original information to the Department within thirty days. *Id.*

- b. Annual Licensure Adjustment Statement

The institution must submit annually to the Department a written statement containing a "licensure adjustment," which provides, as of the first day of the institution's fiscal year, the number of beds it has qualified for patient occupancy, in each specific service the infirmary is licensed to deliver, and a total of all beds. Mass. Regs. Code tit. 105, § 130.123(A)(1); see Mass. Gen. L. ch. 111, § 71. The statement must also contain a requested licensure adjustment in medical/surgical beds as of the first day of the hospital's fiscal year. Mass. Gen. L. ch. 111, § 71. The institution must calculate the numbers based on the number of licensed beds reported on Rate Setting Commission Form 40.3 (Schedule III) and report the actual numbers used in the calculation. See Mass. Regs. Code tit. 105, § 130.123(A)(2); Mass. Gen. L. ch. 111, at § 71.

(1) Records of Treatment. The infirmary must maintain records of the treatment of the student-patients under its care. Mass. Gen. L. ch. 111, § 70. Such records must include the medical history and the nurses' notes. *Id.*

(2) Disclosure. A student patient's records may be inspected only by the medical staff of the infirmary in the course of providing diagnosis or treatment, the patient, the patient's attorney (upon submission of a written authorization from the patient), the executor or

administrator of a deceased patient's estate, upon written request by same, upon a judicial order or upon an order of the Commissioner of the Department. Mass. Gen. L. ch. 111, § 70.

(3) Serious Incidents and Accident Reports. Within one week of occurrence, the institution must file a written report with the Department of "serious incidents" occurring on the infirmary premises that "seriously affect the health and safety of its patients," with the exception of the following incidents which must be reported immediately by telephone: fire, suicide, serious criminal acts, pending or actual strike by employees (and contingency plans for operating the hospital) and serious physical injury to a patient due to an accident or unknown cause. Mass. Regs. Code tit. 105, § 130.331.

(4) Plan of Correction. Following a Department inspection, should an infirmary receive a deficiency statement citing violations of the licensure standards in 105 C.M.R. § 130.000, the institution must submit a written plan of correction which must set forth, as to each violation, the specific corrective action to be taken, a timetable for such action, and the date by which compliance will occur. *Id.* at § 130.112.

Retention. Records of diagnosis and treatment of patients must be retained for **thirty years** after the discharge or the final treatment of the patient to whom it relates. Mass. Gen. L. ch. 111, § 70; Mass. Regs. Code tit. 105, § 130.370(A). When originals of treatment records have been photographed or microphotographed, the institution may, after notifying the supervisor of public records, destroy the original of such records. Mass. Gen. L. ch. 111, § 70; *see* Mass. Gen. L. ch. 66, §§ 1, 8. *See also* 105 C.M.R. § 130.370(B) (specifying records that are not considered part of the diagnosis and treatment record and are required only to be maintained for **five years** following the date of service.)

II. RECORD-KEEPING AND REPORTING REQUIREMENTS APPLICABLE ONLY TO STATE INSTITUTIONS⁶⁷

A. DISCLOSURE AND PRIVACY OF STUDENT DATA

Regulations promulgated by the Higher Education Coordinating Council (the "Council"), pursuant to its obligation to ensure the privacy of student and employee records and personal data systems, establish standards for the Council and the Commonwealth for the proper maintenance and dissemination of data, as defined by the FIPA, the Public Records Act, M.G.L. ch. 66, and FERPA, 20 U.S.C. § 1232g.

⁶⁷ The University of Massachusetts has its own statutory set of record keeping requirements. *See* Mass. Gen. L. ch. 75.

The regulations promulgated by the Council to comply with FIPA, the Public Records Act, and FERPA are not expressly applicable to state institutions. Nonetheless, the regulations implicitly require compliance with certain provisions by the institutions insofar as they are "data holders," a term defined as an "institution . . . holding or otherwise involved in the aggregation or maintenance of student or employee data." 610 C.M.R. § 410.

1. *Directory Information is Disclosable*

The regulations specify the types of "personal data" that an institution may disseminate. Defined as "Directory Information," such data includes an individual's "name, address, telephone number, date of birth, place of birth, major field of study or employment position, participation in college-recognized sports and activities, name of the college weight and height of members of an athletic team, dates of attendance, degree and awards received, the most recent previous educational agency or institution attended by the student, or similar information." *Id.* By contrast, the Council may not disclose "individual" student or employee data, but only data that is in aggregate form. 620 C.M.R. at § 4.35.

2. *Security Measures to Protect Unwarranted Disclosure*

The Council is required to take "reasonable precautions" to ensure that "all data . . . collected from data holders and maintained by the Council" is "protected from unauthorized access, theft or other physical threat." *Id.* at § 4.33. The dataholders from which the Council solicits and reviews data "shall be informed of these data security measures." *Id.*

Presumably, each institution will assist the Council in complying with the privacy statutes by enforcing similar security measures with their own data, for example, by securing hard copy and computerized forms of data under "lock and key," changing passwords for entry into the computer system at least once every three months, providing access to the data only to certain authorized employees, and designating certain employees to "inventory, monitor and record the use of the data" by an up-to-date request log. *Id.*

In addition, the Council is required to inform data holders "in writing" of the purposes for which data is collected, how data shall be used, and how it may be disclosed. *Id.* at § 4.34. By necessary implication, the data holder should adhere to these instructions on the uses and dissemination of the data. *See id.*

B. MISSION STATEMENTS

As the agency with supervisory authority over the licensing and operation of state institutions in the Commonwealth, the Council is responsible for defining "the mission of the State's system of higher education." M.G.L. ch. 15A, § 1.

The Council has the authority to develop mission statements and evaluate achievement of goals for the separate units of the Massachusetts higher education system:

- the state colleges,
- the state university, and
- community colleges⁶⁸

The Chancellor of the Council (the "Chancellor"), serves as the Chief Executive Officer of the Council, to implement its policies and serve at its pleasure. M.G.L. ch 15A, § 6.

The Boards of Trustees of the separate state institutions (hereafter "State Institutions") must submit a "mission statement" for the institution to the Council for its approval, after which the State Institution shall make it available to the public. *Id.* at § 22. The institution's mission statement must be consistent with the identified mission statement for the entire public higher education system and the identified mission statement for the category of institution in which the State Institution is included.

a. Submission of Institutional Self-Assessment.

Biennially, each State Institution must submit to the Council an "institutional self-assessment report," which also shall be made public and available at the institution. *Id.* at § 22. The report is used to promote improvement of the institution by the Board of Trustees and must include progress in achieving the goals of the approved mission statement. *Id.*

b. Educational Opportunities Information Center - Providing Nonconfidential Data

The office of the Council has an "educational opportunities information center" to provide information both to prospective college and university students and to state and independent institutions on matters regarding student admissions, enrollment and transfers. *Id.* at § 20. State Institutions must submit whatever nonconfidential data they have which may assist the center in performing its duties. The center may "request" similar data from independent colleges. *Id.*

C. **ADMISSION STANDARDS, FIVE-YEAR PLAN AND FINANCIAL DATA**

1. *Standards for Admissions/Standards for Academic Programs*

⁶⁸ The "public institutions of higher education" in the Commonwealth are designated as follows: University of Massachusetts (various branches), several state colleges, several community colleges, and a few others (Massachusetts Maritime Academy, Massachusetts College of Art). M.G.L. ch. 15A, § 5.

The State Institutions must submit **standards for admission** to the institution and **standards for academic programs** within the institution, that are subject to disapproval by the Council. *Id.* at § 9. *See id.* at § 22 (describes institutional programming for all major and degree programs). All admissions and program standards will be published by the Council.

2. *Five-Year Plan*

State Institutions must submit a **five-year plan** to the Council, which shall be updated annually. *Id.* at §§ 9, 22.

- The Council must develop a five-year "master plan" for public higher education, after taking into account the individual plans of the State Institutions. *Id.* at § 9. The master plan includes, among other factors, enrollment projections, utilization of existing facilities, promoting research, programmatic excellence, and need for program revisions, including termination of obsolete, unnecessary or duplicative programs. *Id.*

3. *Financial Data and an Annual Institutional Spending Plan*

Id. at §§ 9, 22.⁶⁹

- Each spending plan also must specify what amount was expended for "administrative expenses" as defined by the Council. *Id.* at § 31.
- The Council must ensure public inspection, through publication, of these spending plans. *Id.* at § 9.

4. *Other Data*

- a. *Data that are Required to be Compiled by the Council and, thus, should be Submitted by the State Institutions:*

- ratios of graduation;
- scores by students on standardized examinations; and
- any other data relevant to the discharge of the Council's responsibilities.
Id. at § 9(s).

⁶⁹ In accordance with post-audit procedures established by the Council, it must review annually the fiscal operations of each State Institution. Mass. Gen. L. ch. 15A, § 9(r).

5. Monthly Reports of Revenues and Expenditures

State Institutions must report monthly "by subsidiary" all revenues and expenditures from both appropriated and non-appropriated accounts on the Massachusetts management and accounting reporting system. Mass. Gen. L. ch. 15A, § 15c, inserted by St. 1993, ch. 110, § 63.

6. Annual Reporting of Personnel Information

State Institutions must report annually all personnel information for all employees compensated from any budgetary, federal, capital or trust fund through the personnel administration reporting and information system. *Id.* at § 15D inserted by St. 1993, ch. 110, § 63.

7. Budget Requests

Each State Institution must submit a "budget request" for the "ordinary maintenance of its institution." *Id.* at § 15B; *see id.* at § 22. There is a two-year budget cycle for public higher education system budgets submitted in the even numbered fiscal year (includes budget requests for following odd-numbered year). The Council develops its overall budget and periodic requests for funding for capital projects, based in part on the requests received from the State Institutions. *Id.* at § 15. Budget requests must contain the following:

- the salary of all officers and employees, all revenues of the institutions, any other information as the Council may require, or as provided in Mass. Gen. L. ch. 29, § 3 (detailing requirements of annual budget requests and reports of expenditures and revenues to be made by state agency to Commission of Administration and Finance). *See also id.* at § 23 (same reporting requirements for "estimate of institution's ordinary maintenance and revenues" to be made "periodically").
- in addition, each State Institution must also submit a requested capital outlay budget to the Council. *Id.* at § 22.

D. FOUNDATIONS FOR STATE INSTITUTIONS: ANNUAL REPORTS AND AUDITS

Each State Institution has the legal authority to establish its own foundation and corresponding endowment funds, which may receive revenue from charitable gifts and donations to use for the purpose of the endowed institution. Mass. Gen. L. ch. 15A, § 37(a).⁷⁰

⁷⁰ Each State Institution may administer for programmatic, institutional and faculty research purposes all grants, gifts and trusts from private foundations, corporations, federal agencies, alumnae, and other sources. Such monies shall be administered in accordance with Mass. Gen.

Any such foundation is deemed a nonprofit corporation pursuant to Mass. Gen. L. ch. 180, § 2, and governed by that statute except as otherwise provided in Mass. Gen. L. ch. 15A, § 37(b). Annual notification must be given to the Council and the institution's Board of Trustees of the members and officers of the governing board of the foundation. *Id.* at § 37(c).

1. Annual Report

- An annual report is required of the foundation's financial accounts. *Id.* at § 37(f).
- A copy of the report must be substituted to the Council and to the Board of Trustees of the State Institution that it supports. *Id.* at § 37.
- In the annual report, as well as in any audit reports, the identities of the donors who request to remain anonymous must be protected. *Id.*
- The annual report, when received by the Council or the Board of Trustees, shall be considered a public record. *Id.* See Mass. Gen. L. ch. 4, § 7, ch. 26; Mass. Gen. L. ch. 15A, ch. 15A, § 37(f).
- The Council or the Board may request any additional information relative to the operations of the foundation. Mass. Gen. L. ch. 15A, § 37.

2. Financial Records Maintained for State Audit

The state auditor may conduct an audit of the foundation on his/her own initiative or upon request by the Council. *Id.* at § 37(g).

The audit may include, but not be limited to the following:

- transfers to or expenditures from foundation accounts of public funds;
- use of employees paid with public funds to staff the foundation;
- existence of contracts or agreements between a foundation and an institution; and
- examination of such records of the foundation as the auditor deems "necessary and appropriate."

L. ch. 29, § 2C and ch. 15A, § 21 (e). See Mass. Gen. L. ch. 29, § 2C (all federal grants paid into the Commonwealth's treasury are kept segregated in a special account and are subject to the provisions of law regulating the disbursement of public funds).

E. PUBLIC RECORDS AND PRIVACY OF DATA HELD BY STATE INSTITUTIONS

1. *Definitions and Exemptions*

Public records are broadly defined under Massachusetts⁷¹ law and include "any documentary materials or data . . . made or received by an officer or employee of any agency, department, division or authority of the Commonwealth." Mass. Gen. L. ch. 4, § 7, cl. 26. Such records are available for public inspection, and a custodian of the record must comply with a request for inspection or to furnish a copy of the record. *Id.* at § 10(b).

A public record encompasses data maintained by a State Institution in a "hard copy" or in computerized form, unless such data falls within one of the limited exceptions to the public records statute, which include the following:

- data that are "specifically or by necessary implication, exempted from disclosure by statute";
- inter-agency or intra-agency memoranda or letters relating to development of policy positions by the agency (not applicable to "reasonably completed factual studies or reports" on which the developing policy position may be based);
- personnel files or information;
- medical files or information; and
- any other data relating to a specifically named individual, the disclosure of which may constitute "an unwarranted invasion of personal privacy." *Id.*⁷²

2. *Retention of Public Records in General*

In general, public records must be retained for "**seven years** after the latest original entry therein or thereon." *Id.* at § 8. However, if another law provides for a different period of retention, or the State Records Conservation Board designates an alternative "disposal schedule," that time period will be followed. *See id.*; Mass. Gen. L. ch. 30, § 42.

⁷¹ This section only discusses Massachusetts public records law, as institutions do not fall under the Freedom of Information Act, which is the federal public records law. 5 U.S.C. §§ 551-552.

⁷² *But see Brogan v. Westport*, 401 Mass. 306, 516 N.E.2d 159, 160 (1987) (Names of public school teachers and dates and generic classifications of their absences are not "highly personal" details and thus are not included within privacy exemptions.)

3. *Fair Information Practices Act: Personal Data - Safeguards for Nondisclosure of Records Required - Specific Records of Access Required*

Data that is exempt from the definition of a public record, as described above, and that can be "readily associated with a particular individual" because of name, identifying number, mark or description, is "personal data"⁷³ as defined by the Fair Information Practices Act ("FIPA"), Mass. Gen. L. ch. 66A, §§ 1 *et. seq.*

a. *Duties of the State Institution*

As a "holder" of personal data, each State Institution must take specific action to prevent access to or dissemination of such data.⁷⁴ Specifically, a State Institution must:

- designate one individual responsible for insuring that the requirements of Mass. Gen. L. ch. 66A for preventing access to or dissemination of personal data are followed;
- not allow access to the data by any other agency or individual not employed by the holder, unless (1) access is authorized by "statute or regulations that are consistent with the purposes" of FIPA, (2) the person who is the subject of the data ("data subject") has consented to release of the data, or (3) access is requested by a physician treating the data subject due to a medical or psychiatric emergency in which the data subject is unable to give consent for release of the data. *Id.* at § 2(c);
- the State Institution must maintain a record of every incident of access to and every usage of personal data held in a personal data system by persons not employed or associated with the holder, including names of all individuals and organizations who have obtained access to the data and their intended use of it. *Id.* at § 2(1); *see id.* at § 1 (defining personal data systems to include both manual and computerized systems);
- ensure that no personal data is disclosed in response to a demand made pursuant to compulsory legal process unless the data subject has been given reasonable advance notice so as to enable him to seek to quash the process. *Id.* at § 2(1); *accord*, 610 C.M.R. § 10.03(2)(n); and

⁷³ Exceptions to the definition of "personal data" include intelligence information, evaluative information or criminal offender record information as defined by Mass. Gen. L. ch. 6, § 167.

⁷⁴ A holder is an "agency which collects, uses, maintains, or disseminates personal data." Mass. Gen. L. ch. 66A, § 1.

- collect no more personal data than is reasonably necessary for the performance of the holder's statutory functions. *Id.* at § 2(k).

b. *Data Subject's Right of Access*

The data subject has the automatic right of access to the personal data that is in the custody of the holder, except when otherwise prohibited by statute, or in a situation in which disclosure would likely prejudice an ongoing investigation for law enforcement purposes. *See id.* at § 2(I) (holder may redact identifying information on third parties except in limited circumstances). *See also* 610 C.M.R. § 10.04 (9) (holder may adopt reasonable rules regulating time and place for inspection of data and manner and cost of copying).

c. *Data Subject's Right to Contest Accuracy of Information: Record of Contention*

The data subject also has the right to contest the accuracy, completeness, and disclosure of the personal data or the denial of access to such data. *Id.* at § 10.02(j). The data subject may correct or complete the data, when there is an agreement concerning the change to be made, or when there is a disagreement, the data subject may make a written record of his/her contentions, which must be included as part of the personal data and included in any subsequent disclosure of the disputed data. *Id.*

d. *Regulations to Ensure Privacy and Confidentiality of Personal Data - Records to be Maintained by State Institutions*

The regulations promulgated by the Secretary of Educational Affairs to effectuate FIPA⁷⁵ apply both to the Council and to all state institutions. *See* 610 C.M.R. §§ 10.00 *et. seq.*

(1) *Annual Report*. Each State Institution must submit an annual report to the Chancellor concerning each personal data system that it operates. 610 C.M.R. § 10.03(2)(f). The report must include the following information:

- the name of the personal data system and the title and address of the person in charge of it;
- the nature and purpose of the system;
- the types, categories, uses, and sources of data therein;

⁷⁵ Section 3 of M.G.L. ch. 66A, requires that the Secretary of each executive office promulgate regulations "to carry out the purposes of this chapter which shall be applicable to all agencies . . . and instrumentalities within each of said executive offices."

- as to each type of data, the "assurance" that such data is "essential" to the performance of lawful functions by the State Institution, as required by M.G.L. ch. 66A, §2(k); *see also* 610 C.M.R. § 10.03(1)(b);
- the approximate number of persons about whom data is held;
- whether, and to what extent, data is maintained in computerized form;
- a description of each person/organization having access to the system;
- description of the procedures whereby a data subject may have a search made to obtain, inspect and copy his/her personal data, and, if he/she objects to the accuracy or completeness of it, to correct it or to make a written notation of his/her objection, and procedures for compliance with the other requirements placed on a holder pursuant to Mass. Gen. L. ch. 66A §2(j); and
- a statement that the report "is available upon request" to the public. *Id.* at § 610 C.M.R. § 10.03.

Retention requirement. There are no specific retention requirements promulgated under these regulations. However, Section 3B of Mass. Gen. L. ch. 214 creates a right of action for any person who suffers "any damage" as a result of a violation of the FIPA by a "holder" as defined by Mass. Gen. L. ch. 66A § 1. The action to enforce liability may be brought within three years from the date in which liability arises. Retention of annual reports for *four years* is therefore recommended.

(2) *Duplicates To Be Avoided.* Each State Institution must insure that the number of duplicate files of personnel data is at an "absolute minimum." *Id.* at § 10.03(2).

(3) *Log of Access - "Audit Trail."* The State Institution must maintain the most "feasibly precise" records of those who gain access to personal data and the uses of such data (the "audit trail") and, specifically, must ensure the following:

- a computerized data system must have a program to electronically record all persons who gain access to such data and the purposes for which access is gained;
- regarding data held in a manual form, the same record of access and uses must be made, to the extent possible;
- the "audit trail" thus developed is treated as part of the personal data held, and thus is available only to the data subject, authorized employees pursuant to 610 C.M.R. § 10.03(2)(c), and the Chancellor, for purposes of reviewing and monitoring compliance with these regulations; and

- a log is kept which records the names of employees or other persons having access to the room where the data is stored and the names of those actually working with the data in the place where it is stored.

Id. at § 10.03(2)(g).

Retention requirement. It is recommended that the State Institution retain the "audit trail" for **four years**. Mass. Gen. L. ch. 214, § 3B.

e. Biennial Review Plan and Report

Biennially, each State Institution must submit to the Chancellor a review plan for the personal data system(s), which must describe the system(s) involved, the accuracy, need, relevance and timeliness of the data, and the persons conducting the review. *Id.* at § 10.03(2)(h). Following such review, a report must be written and submitted to the Chancellor and chief executive officer of the State Institution which must describe the data reviewed and the conformance with these regulations. *Id.*

f. Master Plan

Prior to computerizing any existing personal data system, the State Institution must submit and obtain approval from the Chancellor of a "master plan," which identifies and justifies the personal data as "essential," pursuant to § 10.03(1)(f), shows compliance with all of the prescriptions of § 10.03, identifies foreseeable threats to security of the data, and describes safeguards to be employed to avoid or minimize such threats. *Id.*

g. Response to Request for Data Held

Upon request, each State Institution must inform an individual, in writing, whether it holds or has held (in the past two years) any personal data concerning him or her. *Id.* at § 10.04(5). In addition, the Chancellor may require that a state agency inform data subjects of their rights pursuant to FIPA, these regulations and Mass. Gen. L. ch. 214, § 3B,⁷⁶ the type of data held, the length of time of such holding and expected uses of the data. *Id.* at § 10.03(2)(i).

Retention requirement. It is recommended that the institution retain the "Response to Request for Data Held" for **four years**. Mass. Gen. L. ch. 214, § 3B.

⁷⁶ Section 3B of Mass. Gen. L. ch. 214B creates a right of action for any person who suffers "any damage" as a result of a violation of the FIPA by a "holder" as defined by Mass. Gen. L. ch. 66A, §1. *See id.* (aside from actual damages, exemplary damages of at least \$100 must be awarded for each violation, as well as reasonable attorney's fees).

h. Record Establishing "Informed Consent" of Data Subject

Only a data subject may give "informed consent" to a State Institution, thus enabling the institution to obtain personal data. 610 C.M.R. § 10.04(3). To ensure that the data subject has been notified of and comprehends all criteria necessary to provide informed consent, the following information should be given in advance to the data subject:

- (1) an explanation of how the data requested will be used and held;
- (2) the agencies or persons who are likely to receive or hold the data and an assurance that all such "holders" will keep the data confidential;
- (3) the data subject's legal rights to object to the method of holding data or the types of data to be held, in accordance with 610 C.M.R. § 10.04(12)-(19); and
- (4) any legal requirements imposed on the data subject to provide the data requested and any legal or administrative consequences of a decision to withhold such data. *Id.* at § 10.04(4).

Prior to collecting any personal data, the State Institution should obtain a written statement from the data subject indicating that he/she understands and agrees to the above information. *See id.*

Retention Requirements. It is recommended that the institution retain the "Informed Consent" for *four years*. Mass. Gen. L. ch. 214, § 3B.

i. Record of Denial of Access to Data Requested

A record of denial of an individual's request for access to personal data must include the reasons therefor and the rights of appeal set forth in the regulations. *Id.* at § 10.04(11).

j. Records in Relation to Objections by Data Subject

The State Institution should keep records of the following:

- a record of any objection filed by a data subject to the use, disclosure, or accuracy of data;

- notification to the chief executive officer of the institution or to the Chancellor (depending on under whose authority the personal data is held) of the nature of the objection;
- a record describing the investigation of the objection, including the disposition: if the objection is deemed meritorious, the correction of the contents of the data or alteration of the method of holding or use of the data; or if the objection is found unmeritorious, a statement that the data subject was notified of his/her right to make an official statement recording his/her views to be made a part of the data in question;
- notification to the data subject of the information described in II.E.3.h(3), above; and
- notification to the chief executive officer of the State Institution or the Chancellor, where appropriate, of the above actions taken. *Id.* at 10.04(13).

Retention Requirements. It is recommended that the institution retain copies of the objections for *four years*. Mass. Gen. L. ch. 214, § 3B.

k. Record of Appeal from Adverse Decision

The data subject may appeal any adverse decision on his/her objections to the chief executive officer of the State Institution. *Id.* at § 10.04(14). In such a case, the chief executive officer must take specific action, and a record of each such action should be maintained. Specifically, the chief executive officer must:

- (1) notify the Chancellor of receipt of the appeal and the nature of same;
- (2) notify the Chancellor of the nature of the decision on appeal within seven days of rendering the decision; and
- (3) within seven days after rendering the decision, notify the data subject of the decision and the opportunities for further appeal to the Chancellor. *Id.* at 10.04(15).

Retention Requirements. It is recommended that the institution retain the record of appeal for *four years*. Mass. Gen. L. ch. 214, § 3B.

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Page	Subject of Law	C.F.R. Citation	U.S.C. Citation	URL Citation
1	FERPA generally		20 U.S.C. §§ 1232g (a)(1),(2); 1232g (b)(1),	http://www.law.cornell.edu/uscode/20/1232g.shtml
1	Annually informing students of their FERPA rights	34 C.F.R. § 99.7	20 U.S.C. § 1232g(e), (f)	http://http://www.access.gpo.gov/nara/cfr/cfr-retrieve.html
1	Destroying records when request exists to examine	34 C.F.R. § 99.10(e)		http://www.access.gpo.gov/nara/cfr/cfr-retrieve.html
1	Penalty for non-compliance with FERPA	34 C.F.R. § 99.67	20 U.S.C. §§ 1232g(f)	http://www.access.gpo.gov/nara/cfr/cfr-retrieve.html
1	Student access to records	34 C.F.R. § 99.10	20 U.S.C. § 1232g(d)	http://www.access.gpo.gov/nara/cfr/cfr-retrieve.html
1	Parent access to records	34 C.F.R. § 99.10	20 U.S.C. § 1232g(a)(2)	http://www.access.gpo.gov/nara/cfr/cfr-retrieve.html
1	Records covered under FERPA	34 C.F.R. §§ 99.3, 99.10	20 U.S.C. § 1232g(a)(4)(A)	http://www.access.gpo.gov/nara/cfr/cfr-retrieve.html
1	FERPA does not apply to those not at institution	34 C.F.R. §§ 99.3, 99.31(a)(12)	20 U.S.C. § 1232g(a)(6)	http://www.access.gpo.gov/nara/cfr/cfr-retrieve.html
1	FERPA applies only to institutions receiving federal funds	34 C.F.R. § 99.1(d)		http://www.access.gpo.gov/nara/cfr/cfr-retrieve.html
1	FERPA for students eighteen and older	34 C.F.R. §§ 99.3-99.5	20 U.S.C. § 1232g(d)	http://www.access.gpo.gov/nara/cfr/cfr-retrieve.html
1	Records concerning students no longer enrolled at institution	34 C.F.R. § 99.3		http://www.access.gpo.gov/nara/cfr/cfr-retrieve.html
2	Financial records of parents	34 C.F.R. § 99.12(b)(1)	20 U.S.C. § 1232g(a)(1)(C)(i)	http://www.access.gpo.gov/nara/cfr/cfr-retrieve.html
2	Confidential letters of recommendation in file before 6/1/75	34 C.F.R. § 99.12(b)(2)	20 U.S.C. § 1232g(a)(1)(C)(ii)	http://www.access.gpo.gov/nara/cfr/cfr-retrieve.html
2	Confidential letters of recommendation if student waives access rights	34 C.F.R. § 99.12(b)(3)	20 U.S.C. § 1232g(a)(1)(C)(iii)	http://www.access.gpo.gov/nara/cfr/cfr-retrieve.html
2	Standard for Student waiver of his/her access rights to confidential letters & recommendations	34 C.F.R. § 99.12(c)(1) - (3)	20 U.S.C. § 1232g(a)(1)(D)	http://www.access.gpo.gov/nara/cfr/cfr-retrieve.html
2	Records solely in faculty/administrator's possession	34 C.F.R. § 99.3	20 U.S.C. § 1232g(a)(4)(B)(i)	http://www.law.cornell.edu/uscode/20/1232g.shtml

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2	Records created by law enforcement unit for its own use	34 C.F.R. § 99.3	20 U.S.C. § 1232g(a)(4)(B)(ii)	http://www.law.cornell.edu/uscode/20/1232g.shtml
2	Employment records of those not attending institution	34 C.F.R. § 99.3	20 U.S.C. § 1232g(a)(4)(B)(iii)	http://www.law.cornell.edu/uscode/20/1232g.shtml
2	Employment records of students working at institution	34 C.F.R. § 99.3		http://www.access.gpo.gov/nara/cfr/cfr-retrieve.html
2	Medical/psychological records not available to others	34 C.F.R. § 99.3	20 U.S.C. § 1232g(a)(4)(B)(iv)	http://www.law.cornell.edu/uscode/20/1232g.shtml
2	Prohibits release of records without student's permission	34 C.F.R. §§ 99.5, 99.30	20 U.S.C. § 1232g(d)	http://www.access.gpo.gov/nara/cfr/cfr-retrieve.html
2	Prohibits release of records without parents' permission	34 C.F.R. § 99.30	20 U.S.C. § 1232g(b)(1), (b)(2)(A)	http://www.access.gpo.gov/nara/cfr/cfr-retrieve.html
3	Exceptions to release rule	34 C.F.R. § 99.31	20 U.S.C. § 1232g(b)(1)	http://www.law.cornell.edu/uscode/20/1232g.shtml
3	Exception for release to parents if student is a dependent	34 C.F.R. §§ 99.31(a)(8), 99.31(a)(12)	20 U.S.C. § 1232g(b)(1)(H)	http://www.access.gpo.gov/nara/cfr/cfr-retrieve.html
3	Exception if an emergency	34 C.F.R. § 99.31(a)(10)	20 U.S.C. § 1232g(b)(1)(I)	http://www.access.gpo.gov/nara/cfr/cfr-retrieve.html
3	Exception if under judicial order/subpoena	34 C.F.R. § 99.31(a)(9)	20 U.S.C. § 1232g(b)(1)(J)	http://www.access.gpo.gov/nara/cfr/cfr-retrieve.html
3	Exception for results of disciplinary proceeding if a violent crime	34 C.F.R. § 99.31(a)(3)	20 U.S.C. § 1232g(b)(6)	http://www.access.gpo.gov/nara/cfr/cfr-retrieve.html
4	Exception for "directory information" with conditions (students in attendance)	34 C.F.R. § 99.37(a)	20 U.S.C. §§ 1232g(a)(5)(A) - (B)	http://www.access.gpo.gov/nara/cfr/cfr-retrieve.html
4	Exception for "directory information" without conditions (students not in attendance)	34 C.F.R. § 99.37(b)	20 U.S.C. § 1232g(a)(6)	http://www.access.gpo.gov/nara/cfr/cfr-retrieve.html
4	Conditions for disclosure of information to third parties	34 C.F.R. 99.32	20 U.S.C. § 1232g(b)(4)(A)	http://www.access.gpo.gov/nara/cfr/cfr-retrieve.html
4	Third party cannot release information without student's consent	34 C.F.R. 99.33(a),(e)	20 U.S.C. § 1232g(b)(4)(B)	http://www.access.gpo.gov/nara/cfr/cfr-retrieve.html
4	FERPA does not apply to rejected applicants to an institution	34 C.F.R. 99.3	20 U.S.C. § 1232g(a)(6)	http://www.law.cornell.edu/uscode/20/1232g.shtml
5	Generally student disciplinary records are subject to FERPA		20 U.S.C. § 1232g(h)	http://www.law.cornell.edu/uscode/20/1232g.shtml
5	Restriction on student access to law enforcement records	34 C.F.R. § 99.8	20 U.S.C. § 1232g(a)(4)(B)(ii)	http://www.access.gpo.gov/nara/cfr/cfr-retrieve.html
6	Student papers, theses with personally identifiable information		20 U.S.C. § 1232g(a)(4)(A)	http://www.law.cornell.edu/uscode/20/1232g.shtml
6	Student papers, theses with only "directory information"	34 C.F.R. § 99.37	20 U.S.C. §§ 1232g(a)(5)(A) - (B)	http://www.access.gpo.gov/nara/cfr/cfr-retrieve.html
6	Student affairs records with identifiable information	34 C.F.R. § 99.3	20 U.S.C. § 1232g(a)(4)(A)	http://www.law.cornell.edu/uscode/20/1232g.shtml
6	Sports/activity involvement records as "directory information"	34 C.F.R. § 99.37	20 U.S.C. §§ 1232g(a)(5)(A) - (B)	http://www.law.cornell.edu/uscode/20/1232g.shtml
7	Student's right to have a professional review medical records		20 U.S.C. § 1232g(a)(4)(B)(iv)	http://www.law.cornell.edu/uscode/20/1232g.shtml
7	Requirement to maintain/retain records for F-1 & M-1 visa students	8 C.F.R. § 214.3(g)		http://www.access.gpo.gov/nara/cfr/cfr-retrieve.html
7	Requirement to retain records for exchange visa students	22 C.F.R. § 514.10(h)		http://www.access.gpo.gov/nara/cfr/cfr-retrieve.html
7	Types of information to be kept for foreign students	8 C.F.R. § 214.3(g)		http://www.access.gpo.gov/nara/cfr/cfr-retrieve.html
7	Requirement to provide information on foreign students to INS	8 C.F.R. § 214.3(g)		http://www.access.gpo.gov/nara/cfr/cfr-retrieve.html
8	Payroll records covered by FERPA	29 C.F.R. § 516.2	29 U.S.C. §§ 203, 211(c)	http://www.access.gpo.gov/nara/cfr/cfr-retrieve.html
8	Requirements for "bona fide" executive or professional staff	29 C.F.R. § 516.3	29 U.S.C. § 213(a)(1)	http://www.access.gpo.gov/nara/cfr/cfr-retrieve.html
8	Retention period for "bona fide" executives, professionals	29 C.F.R. § 516.3		http://www.access.gpo.gov/nara/cfr/cfr-retrieve.html
8	Retention period for collective bargaining agreements, plans	29 C.F.R. §§ 516.1, 516.20, 516.34		http://www.access.gpo.gov/nara/cfr/cfr-retrieve.html

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8	Other records to be retained for three years	29 C.F.R. § 516.5		http://www.access.gpo.gov/nara/cfr/cfr-retrieve.html
9	Records to be retained for two years	29 C.F.R. § 516.6		http://www.access.gpo.gov/nara/cfr/cfr-retrieve.html
9	Records for "learners, apprentices, full-time students"	29 C.F.R. §§ 516.5 - 516.6, 516.30		http://www.access.gpo.gov/nara/cfr/cfr-retrieve.html
9	Equal Pay Act (EPA)	29 C.F.R. § 1620.1 et seq.	29 U.S.C. § 206(d)	http://www.access.gpo.gov/nara/cfr/cfr-retrieve.html
9	Records necessary to comply with the EPA	29 C.F.R. §§ 1620.32, 516.0 - 516.34		http://www.access.gpo.gov/nara/cfr/cfr-retrieve.html
10	Records necessary to explain a wage differential for EPA	29 C.F.R. § 1620.33		http://www.access.gpo.gov/nara/cfr/cfr-retrieve.html
10	Two year retention period for records relating to wage differential	29 C.F.R. § 1620.32(c)	44 U.S.C. § 3501	http://www.access.gpo.gov/nara/cfr/cfr-retrieve.html
10	Title VII information	29 C.F.R. § 1602.48, 1602.14		http://www.access.gpo.gov/nara/cfr/cfr-retrieve.html
10	Retention period for Title VII information	29 C.F.R. § 1602.49		http://www.access.gpo.gov/nara/cfr/cfr-retrieve.html
10	EEOC and ADA work force composition records retention guidelines	29 C.F.R. §§ 1602.7 - 1602.58		http://www.access.gpo.gov/nara/cfr/cfr-retrieve.html
10	Records necessary for EEOC filing requirements	29 C.F.R. § 1602.50		http://www.access.gpo.gov/nara/cfr/cfr-retrieve.html
11	Retention period for EEOC filing information	29 C.F.R. § 1602.48		http://www.access.gpo.gov/nara/cfr/cfr-retrieve.html
11	Records that relate to Affirmative Action Programs (AAPs)	41 C.F.R. §§ 60-1.40, 60-2.14		http://www.access.gpo.gov/nara/cfr/cfr-retrieve.html
11	Annual updates of AAPs	41 C.F.R. § 60-1.40(c)		http://www.access.gpo.gov/nara/cfr/cfr-retrieve.html
11	Components of the AAP	41 C.F.R. §§ 60-2.11 - 60-2.13		http://www.access.gpo.gov/nara/cfr/cfr-retrieve.html
11	OFFCP Internal audit requirement	41 C.F.R. §§ 60-2.22, 60-2.25		http://www.access.gpo.gov/nara/cfr/cfr-retrieve.html
12	Requirements for institutions that are also "contractors"	41 C.F.R. § 60-1.7		http://www.access.gpo.gov/nara/cfr/cfr-retrieve.html
12	AAPs relating to employment of handicapped persons	41 C.F.R. § 60-741.5		http://www.access.gpo.gov/nara/cfr/cfr-retrieve.html
12	Internal reporting systems to measure an AAP's effectiveness	41 C.F.R. § 60-741.44(1)(h)(i)		http://www.access.gpo.gov/nara/cfr/cfr-retrieve.html
12	AAPs relating to employment of disabled veterans	41 C.F.R. § 60-250.6		http://www.access.gpo.gov/nara/cfr/cfr-retrieve.html
12	Retention period for records relating to AAPs for vets/ handicaps	41 C.F.R. § 60-250.52	38 U.S.C. § 4212	http://www.access.gpo.gov/nara/cfr/cfr-retrieve.html
13	Recommendation for records for OFCCP without retention period		42 U.S.C. § 2000e-5(e)	http://www.law.cornell.edu/uscode/42/2000e-5.shtml
13	Retention for records concerning discrimination charges	29 C.F.R. § 1602.14		http://www.access.gpo.gov/nara/cfr/cfr-retrieve.html
13	Record-keeping requirements for employment decision criteria	29 C.F.R. § 1607.2(A) - 1607.2(C)		http://www.access.gpo.gov/nara/cfr/cfr-retrieve.html
13	Records concerning effect of criteria on minorities' opportunities	29 C.F.R. §§ 1607.4; 1607.15(A)(2)(a) - (B)		http://www.access.gpo.gov/nara/cfr/cfr-retrieve.html
13	Ability to retain records on a "sample" basis	29 C.F.R. § 1607.4 (A)		http://www.access.gpo.gov/nara/cfr/cfr-retrieve.html
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14	Storage and confidentiality of employee medical records	29 C.F.R. §§ 825.500, 1630.14		http://www.access.gpo.gov/nara/cfr/cfr-retrieve.html
14	Immigration and naturalization records	8 C.F.R. § 247a.2		http://www.access.gpo.gov/nara/cfr/cfr-retrieve.html
14	Employees' access to medical records under OSHA	29 C.F.R. § 1910.1020(e)		http://www.access.gpo.gov/nara/cfr/cfr-retrieve.html
14	Records of occupational illness/injuries under OSHA	29 C.F.R. §§ 1904.2, 1904.7		http://www.access.gpo.gov/nara/cfr/cfr-retrieve.html
14	Employers must post yearly summaries of required records	29 C.F.R. § 1904.5		http://www.access.gpo.gov/nara/cfr/cfr-retrieve.html
15	Notification of OSHA if a fatal accident or hospitalization	29 C.F.R. § 1904.8		http://www.access.gpo.gov/nara/cfr/cfr-retrieve.html
15	Retention period for OSHA records	29 C.F.R. §§ 1904.6, 1910.1020(d)(i)		http://www.access.gpo.gov/nara/cfr/cfr-retrieve.html
15	Faculty Peer Review Records (<i>Univ. of Penn v. EEOC</i> , 493 U.S. 182)			http://laws.findlaw.com/US/493/182.html
15	Personnel Records- Affirmative Action Records Storage	29 C.F.R. § 1602.50		http://www.access.gpo.gov/nara/cfr/cfr-retrieve.html
15	Record-keeping requirements under OSHA for exposure to toxic substances	29 C.F.R. §§ 1910.1000 - 1910.1500		http://www.access.gpo.gov/nara/cfr/cfr-retrieve.html
16	Requests for exemption from requirement for undue hardship	29 C.F.R. § 1602.53		http://www.access.gpo.gov/nara/cfr/cfr-retrieve.html
16	Retention guidelines for records made/kept by the institution	29 C.F.R. § 1602.49		http://www.access.gpo.gov/nara/cfr/cfr-retrieve.html
16	Retention period where a charge of discrimination has been filed	29 C.F.R. § 1602.49		http://www.access.gpo.gov/nara/cfr/cfr-retrieve.html
16	Record-keeping under Age Discrimination in Employment Act	29 C.F.R. §§ 1627.1 - 1627.11	29 U.S.C. § 630(b)	http://www.access.gpo.gov/nara/cfr/cfr-retrieve.html
16	Place of keeping records relating to age under EEOC	29 C.F.R. § 1627.6		http://www.access.gpo.gov/nara/cfr/cfr-retrieve.html
16	Exceptions for "good cause" to EEOC storage guidelines	29 C.F.R. § 1627.11		http://www.access.gpo.gov/nara/cfr/cfr-retrieve.html
16	Examples of types of records considered to be "employment records"	29 C.F.R. § 1602.49		http://www.access.gpo.gov/nara/cfr/cfr-retrieve.html
17	One year retention period for certain personnel records	29 C.F.R. § 1627.3(b)		http://www.access.gpo.gov/nara/cfr/cfr-retrieve.html
17	Retention period for employee tax/withholding records	26 C.F.R. §§ 31 Subpart G		http://www.access.gpo.gov/nara/cfr/cfr-retrieve.html
18	Employee Benefits Plans record keeping (Annual Report)	29 C.F.R. §§ 4065.1 - 4065.3	29 U.S.C. § 1365	http://www.access.gpo.gov/nara/cfr/cfr-retrieve.html
18	Summary Plan Description retention & disclosure (ERISA, Pub. L. 93-406 § 104(a)(1))	29 C.F.R. §§ 2520.104a-3, 2520.104b-2		http://www.access.gpo.gov/nara/cfr/cfr-retrieve.html
18	Time-Period for Summary Plan Disclosures	29 C.F.R. § 2520.104b-2(b)(1),(2)		http://www.access.gpo.gov/nara/cfr/cfr-retrieve.html
18	Time-Period for Disclosures of Material Modifications to plans	29 C.F.R. § 2520.104b-3(a)		http://www.gpo.ucop.edu/cgi-bin/gpogate
18	Filing of Summary of Material Modifications with Dept. of Labor	29 C.F.R. § 2520.104a-7		http://www.access.gpo.gov/nara/cfr/cfr-retrieve.html
18	Filing of notice of "Reportable Events"	29 C.F.R. § 4043.1		http://www.access.gpo.gov/nara/cfr/cfr-retrieve.html
19	Listing of "Reportable Events"	29 C.F.R. § 4043 Subpart B		http://www.access.gpo.gov/nara/cfr/cfr-retrieve.html
19	Information for determining benefits (ERISA, Pub. L. 93-406 § 209(a)(1))		29 U.S.C. §§ 1051 - 1061	http://www.law.cornell.edu/uscode/ch18.shtml
19	Reports to Employees (ERISA, Pub. L. 93-406 § 209(a)(1))		29 U.S.C. § 1025	http://www.law.cornell.edu/uscode/29/1025.shtml
19	Retention period for employee plan documents	29 C.F.R. § 1627.3(b)(2)		http://www.access.gpo.gov/nara/cfr/cfr-retrieve.html

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19	Retention if EEOC begins an enforcement action under ADEA	29 C.F.R. § 1627.3(b)(3)		http://www.access.gpo.gov/nara/cfr/cfr-retrieve.html
20	Retention of records for those required to file reports (ERISA, Pub. L. 93-406 § 107)		29 U.S.C. § 1027	http://www.law.cornell.edu/uscode/29/1027.shtml
20	Retention of records for those subject to ERISA, Pub. L. 93-406 § 4021	29 C.F.R. § 2610.11(a)	29 U.S.C. § 1027	http://www.law.cornell.edu/uscode/29/1027.shtml
20	Disclosure of Polygraph records	29 C.F.R. § 801.35		http://www.access.gpo.gov/nara/cfr/cfr-retrieve.html
20	Retention of polygraph examination records	29 C.F.R. § 801.30		http://www.access.gpo.gov/nara/cfr/cfr-retrieve.html
20	Filing IRS form 990 for non-profit institutions		26 U.S.C. § 6033	http://www.law.cornell.edu/uscode/26/6033.shtml
20	Information included in IRS form 990		26 U.S.C. § 6033(b)	http://www.law.cornell.edu/uscode/26/6033.shtml
20	Availability of form 990 to the public		26 U.S.C. § 6104	http://www.law.cornell.edu/uscode/26/6104.shtml
20	Disclosure requirement doesn't apply to Form 990T		26 U.S.C. § 6104	http://www.law.cornell.edu/uscode/26/6104.shtml
20	Names and addresses of donors are not disclosable information		26 U.S.C. §§ 6104(e)(1)(C), 6104(e)(2)(B)	http://www.law.cornell.edu/uscode/26/6104.shtml
21	Generally: Higher Education Assistance (HEA) programs	34 C.F.R. §§ 600.1 - 600.41	20 U.S.C. §§ 1001 - 1146a	http://www.access.gpo.gov/nara/cfr/cfr-retrieve.html
21	Explanations of HEA programs		20 U.S.C. §§ 1070, 1071, 1076, 1087aa, 10	http://www.law.cornell.edu/uscode/20/1070.shtml
21	FERPA and financial aid disclosures	34 C.F.R. § 99.31(a)(4)		http://www.access.gpo.gov/nara/cfr/cfr-retrieve.html
22	Information to ensure repayment of student loans		20 U.S.C. § 1094(a)(3)	http://www.law.cornell.edu/uscode/20/1094.shtml
22	Disclosure to students of cost of attending an institution	34 C.F.R. § 668.23(h)(1)	20 U.S.C. 1092(a)(1)(E)	http://www.law.cornell.edu/uscode/20/1092.shtml
22	Records of admission, enrollment, and financial aid status	34 C.F.R. § 668.23(h)(1)		http://www.access.gpo.gov/nara/cfr/cfr-retrieve.html
22	Records on institution's eligibility, and financial responsibility	34 C.F.R. § 668.23 (h)(1)		http://www.access.gpo.gov/nara/cfr/cfr-retrieve.html
22	Institution maintaining financial records for an annual audit	34 C.F.R. § 668.23(c)		http://www.access.gpo.gov/nara/cfr/cfr-retrieve.html
22	Institution must develop a loan default plan		20 U.S.C. § 1094(a)(14)	http://www.law.cornell.edu/uscode/20/1094.shtml
23	Report applicants who may have engaged in criminal misconduct	34 C.F.R. § 668.16(g)		http://www.access.gpo.gov/nara/cfr/cfr-retrieve.html
23	Annual Report on Athletically-Related Student Aid	34 C.F.R. § 668.14(d)	20 U.S.C. § 1094(a)(18)(A) - (B)	http://www.law.cornell.edu/uscode/20/1094.shtml
23	Breakdowns on information necessary in Annual Reports		20 U.S.C. § 1092(g)(1)	http://www.law.cornell.edu/uscode/20/1092.shtml
23	Requirement waived if institution is in an assoc. that publishes same information		20 U.S.C. § 1092(e)(6)	http://www.law.cornell.edu/uscode/20/1092.shtml
23	Retention of records relating to HEA programs	34 C.F.R. § 668.24		http://www.access.gpo.gov/nara/cfr/cfr-retrieve.html
24	Annual Reports for Perkins Loan Program	34 C.F.R. § 674.8(c)		http://www.access.gpo.gov/nara/cfr/cfr-retrieve.html
24	Records relating to receipt and expenditure of Perkins funds	34 C.F.R. § 674.19(e)		http://www.access.gpo.gov/nara/cfr/cfr-retrieve.html
24	Institution must maintain current records on Perkins transactions	34 C.F.R. § 674.19(d)		http://www.access.gpo.gov/nara/cfr/cfr-retrieve.html
24	Institution must maintain all loan applications on its annual reports	34 C.F.R. § 674.19(d)(4)		http://www.access.gpo.gov/nara/cfr/cfr-retrieve.html
25	Institution must maintain records supporting its Perkins application	34 C.F.R. § 674.19(d)(3), (5)		http://www.access.gpo.gov/nara/cfr/cfr-retrieve.html

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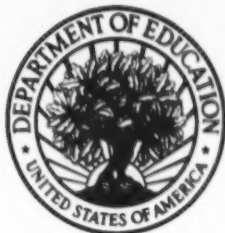
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25	Maintenance of repayment history file for each Perkins borrower	34 C.F.R. § 674.19(e)(2)		http://www.access.gpo.gov/nara/cfr/cfr-retrieve.html
25	Retention of Perkins records	34 C.F.R. § 674.19(e)		http://www.access.gpo.gov/nara/cfr/cfr-retrieve.html
25	Retention of repayment, cancellation and deferment requests	34 C.F.R. § 674.19(e)(3)		http://www.access.gpo.gov/nara/cfr/cfr-retrieve.html
25	College Work Study (CWS) in general	34 C.F.R. § 675.1	42 U.S.C. §§ 2751 - 2756b	http://www.access.gpo.gov/nara/cfr/cfr-retrieve.html
25	Financial Records for CWS	34 C.F.R. § 675.19(b)		http://www.access.gpo.gov/nara/cfr/cfr-retrieve.html
25	Financial Records for CWS transactions	34 C.F.R. § 675.19(b)(2)		http://www.access.gpo.gov/nara/cfr/cfr-retrieve.html
25	Institution must maintain employment-related fiscal records	34 C.F.R. § 675.19(b)(2)(i)-(iii)		http://www.access.gpo.gov/nara/cfr/cfr-retrieve.html
25	Institution must keep all applications for reported CWS students	34 C.F.R. §§ 675.19(b)		http://www.access.gpo.gov/nara/cfr/cfr-retrieve.html
26	Retention period for CWS records	34 C.F.R. § 668.24		http://www.access.gpo.gov/nara/cfr/cfr-retrieve.html
25	Retention period for CWS records, if audit questions exist	34 C.F.R. § 668.24(e)(3)		http://www.access.gpo.gov/nara/cfr/cfr-retrieve.html
26	Federal Supplemental Educational Opportunity Grant Program (SEOG)	34 C.F.R. § 676.1	20 U.S.C. § 1070b(a) - (b)	http://www.access.gpo.gov/nara/cfr/cfr-retrieve.html
26	Financial Records for SEOG	34 C.F.R. § 676.19(b)		http://www.access.gpo.gov/nara/cfr/cfr-retrieve.html
26	Financial Records of program transactions for SEOG	34 C.F.R. § 676.19(b)(2)		http://www.access.gpo.gov/nara/cfr/cfr-retrieve.html
26	Institutions must keep all SEOG applications for reported students	34 C.F.R. § 676.19(b)		http://www.access.gpo.gov/nara/cfr/cfr-retrieve.html
26	Retention period for SEOG records	34 C.F.R. § 676.19(b)(1)		http://www.access.gpo.gov/nara/cfr/cfr-retrieve.html
26	Retention period for SEOG records, if audit questions exist	34 C.F.R. § 676.19(b)(1)		http://www.access.gpo.gov/nara/cfr/cfr-retrieve.html
26	Federal Family Education Loan Program (FFEL)	34 C.F.R. § 682.100		http://www.access.gpo.gov/nara/cfr/cfr-retrieve.html
27	Loan Records Requirements for Federal Family Education Loan Program	34 C.F.R. § 682.610(b)		http://www.access.gpo.gov/nara/cfr/cfr-retrieve.html
27	Completion of "Student's Status Confirmation Reports"	34 C.F.R. § 682.610(c)		http://www.access.gpo.gov/nara/cfr/cfr-retrieve.html
27	Retention Period for FFEL records	34 C.F.R. §§ 682.610(a)(2)		http://www.access.gpo.gov/nara/cfr/cfr-retrieve.html
27	Pell Grant Program	34 C.F.R. § 690.1	20 U.S.C. § 1070a	http://www.access.gpo.gov/nara/cfr/cfr-retrieve.html
28	Institution must maintain records of transactions for Pell Grant programs	34 C.F.R. § 690.81		http://www.access.gpo.gov/nara/cfr/cfr-retrieve.html
28	Institution must maintain records on Student Aid Report (SAR) data	34 C.F.R. § 690.82(a)		http://www.access.gpo.gov/nara/cfr/cfr-retrieve.html
28	Criteria for records institution must maintain on SARs	34 C.F.R. § 690.83		http://www.access.gpo.gov/nara/cfr/cfr-retrieve.html
28	Retention period for Pell Grant records	34 C.F.R. § 690.82(a)		http://www.access.gpo.gov/nara/cfr/cfr-retrieve.html
28	Retention period if audit questions exist	34 C.F.R. §§ 690.82(a)		http://www.access.gpo.gov/nara/cfr/cfr-retrieve.html
28-29	Record-keeping for direct grants to institutions	34 C.F.R. §§ 75.730-75.732		http://www.access.gpo.gov/nara/cfr/cfr-retrieve.html
28	Requirements for endowment challenge grant program reporting		20 U.S.C. § 1065	http://www.law.cornell.edu/uscode/20/1065.shtml
28	Requirements for grants to institutions with high percentages of minorities		20 U.S.C. § 1067	http://www.law.cornell.edu/uscode/20/1067.shtml

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28	Requirement for grants for women and minorities in graduate programs		20 U.S.C. § 1134c-1	http://www.law.cornell.edu/uscode/20/1134c-1.shtml
28	Reporting requirements for law school clinical programs		20 U.S.C. § 1134v	http://www.law.cornell.edu/uscode/20/1134v.shtml
29	Reporting requirements for institutions as non-profit grantees	34 C.F.R. §§ 74.61; 74.70 - 74.73		http://www.access.gpo.gov/nara/cfr/cfr-retrieve.html
29	Requirement that an institution obtain an audit	34 C.F.R. § 74.26		http://www.access.gpo.gov/nara/cfr/cfr-retrieve.html
30	Retention period for non-profit grantees	34 C.F.R. § 74.53		http://www.access.gpo.gov/nara/cfr/cfr-retrieve.html
30	Retention period for all direct grant programs	34 C.F.R. §§ 75.0-75.910		http://www.access.gpo.gov/nara/cfr/cfr-retrieve.html
30	Exception to retention period for litigation, claim, audit, or other action	34 C.F.R. § 74.53(b)(1)		http://www.access.gpo.gov/nara/cfr/cfr-retrieve.html
31	Law Enforcement: Annual Security Report		20 U.S.C. § 1092(f)(1)	http://www.law.cornell.edu/uscode/20/1092.shtml
31	Institutions must complete separate security reports for each campus		20 U.S.C. § 1092(f)(5)(B)	http://www.law.cornell.edu/uscode/20/1092.shtml
31	Information which must be included in the Annual Security Report	34 C.F.R. § 668.47	20 U.S.C. §§ 1092(f)(1)(H), 1145g	http://www.law.cornell.edu/uscode/20/1092.shtml
31	Statistics for specific offenses which must be included in the report	34 C.F.R. § 668.47(a)(6)	20 U.S.C. § 1092(f)(1)(F)	http://www.access.gpo.gov/nara/cfr/cfr-retrieve.html
32	Statistics for arrests for crimes which must be included in the report	34 C.F.R. § 668.47(a)(8)	20 U.S.C. § 1092(f)(1)(H)	http://www.law.cornell.edu/uscode/20/1092.shtml
32	Requirement to report on crimes that are a threat to those on campus		20 U.S.C. § 1092(f)(3)	http://www.law.cornell.edu/uscode/20/1092.shtml
32	Policy and Procedural Statements to be included in the Security Report	34 C.F.R. § 668.47	20 U.S.C. § 1092(f)(7)(A)-(B)	http://www.access.gpo.gov/nara/cfr/cfr-retrieve.html
32	Retention of Records for Institutions' Law Enforcement Departments		20 U.S.C. § 1092(f)(1)(F)	http://www.law.cornell.edu/uscode/20/1092.shtml
33	Title IX		20 U.S.C. § 1681	http://www.law.cornell.edu/uscode/20/1681.shtml
33	Periodic Reviews for compliance with Title IX	34 C.F.R. §§ 106.71		http://www.access.gpo.gov/nara/cfr/cfr-retrieve.html
34	Grievance procedures for Title IX violations for students and employees	34 C.F.R. § 106.8(b)		http://www.access.gpo.gov/nara/cfr/cfr-retrieve.html
34	Retention of records relating to alleged Title IX violations (<i>Bougher v. Univ. of Pennsylvania</i> , 882 F.2d 74, 78 (3d Cir. 1989))			None available
34	Enforcement of Title VI regulations on non-discrimination	34 C.F.R. §§ 100.1, et seq.		http://www.access.gpo.gov/nara/cfr/cfr-retrieve.html
34	Record-keeping for Title VI compliance reviews	34 C.F.R. § 100.7(a)		http://www.access.gpo.gov/nara/cfr/cfr-retrieve.html
35	General compliance Reports under Title VI	34 C.F.R. § 100.6		http://www.access.gpo.gov/nara/cfr/cfr-retrieve.html
35	Non-disclosure of information gained in a Title VI compliance evaluation	34 C.F.R. § 100.6(c)		http://www.access.gpo.gov/nara/cfr/cfr-retrieve.html
35	Notification of Beneficiaries and Participants of Title VI protection	34 C.F.R. § 100.6(d)		http://www.access.gpo.gov/nara/cfr/cfr-retrieve.html
35	Retention of Records relating to alleged Title VI violations (<i>Wilson v. Garcia</i> , 471 U.S. 261, 280 (1985))			http://laws.findlaw.com/US/471/261.html

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36	Grievance procedures necessary for the Rehabilitation Act of 1973	34 C.F.R. § 104.7(b)		http://www.access.gpo.gov/nara/cfr/cfr-retrieve.html
36	Records of Compliance with the Rehabilitation Act of 1973	34 C.F.R. § 100.6(b)		http://www.access.gpo.gov/nara/cfr/cfr-retrieve.html
36	Retention and Availability of records relating to the Rehabilitation Act	34 C.F.R. § 104.6(c)(2)		http://www.access.gpo.gov/nara/cfr/cfr-retrieve.html
37	Retention of Records of alleged Violations of the Rehabilitation Act	34 C.F.R. § 100.11	5 U.S.C. §§ 701, 704	http://www.access.gpo.gov/nara/cfr/cfr-retrieve.html
37	Record keeping for the Americans With Disabilities Act (ADA)	29 C.F.R. 1630.14		http://www.access.gpo.gov/nara/cfr/cfr-retrieve.html
38	Record keeping for drug prevention programs	34 C.F.R. § 86.103	20 U.S.C. § 1145g	http://www.access.gpo.gov/nara/cfr/cfr-retrieve.html
38	Institution must certify that it has implemented a drug prevention program	34 C.F.R. §§ 86.3(b), 86.4	20 U.S.C. § 1145g(a)	http://www.access.gpo.gov/nara/cfr/cfr-retrieve.html
39	Requirements for the drug prevention program	34 C.F.R. § 86.100		http://www.access.gpo.gov/nara/cfr/cfr-retrieve.html
39	Retention period for records relating to the drug prevention program	34 C.F.R. § 86.103(b)		http://www.access.gpo.gov/nara/cfr/cfr-retrieve.html



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